

+ **TEST.CAS. 38/2004 & IA 4617/04 (u/O XXXIX R1&2 CPC)**
ANIL PRAKASH & ANR. Petitioners
Through : Mr.Jaydeep Sarma, Advocate.
versus
STATE & ORS Respondents
Through : Mr.Dinesh Agnani, Sr.Advocate with
Ms.Leena Tuteja & Mr.Ishaan Chawla, Advs. for R2A to
2D.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Present petition under Sections 276 and 278 read with Sections 218 and 237 of Indian Succession Act, 1925 (hereinafter ‘the Act’) has been filed by the petitioners – Anil Prakash and Sunil Prakash for grant of Probate / Letters of Administration.

2. Briefly stated, the petitioners' case is that deceased Dr.Satya Prakash, a male Hindu, died at Sahi Hospital on 02.02.2001. Upon his death, the deceased left behind his wife Usha Kiran (since expired on 25.11.2002), Anil Prakash (petitioner No.1) - son, Sunil Prakash (petitioner No.2) - son and Rita Gulati (daughter) - respondent No.2. During his life time, the deceased executed various Wills, including the one dated 17.07.2000 being his last Will. The Will in question was duly attested by two attesting witnesses - Anil Bhalla and Praveen Vashist, Advocate. The Will after its execution was

handed over to Dr.Dharam Pal, his brother. On 18.05.2004, the petitioners were informed about the Will in question. The respondent No.2 was contacted on 08.06.2004 and apprised about the Will in question and the earlier Wills. It is averred that the deceased bequeathed his half share in the property No.18-A, Nizamuddin West (hereinafter 'the suit property') in favour of the petitioners.

3. The petition was contested by Rita Gulati (since expired); her legal heirs – Desh Deepak Gulati, Rachna Gulati, Kalpana Gulati and Vandana Gulati (R-2A to R-2D) have been brought on record. In her objections, Rita Gulati averred that the petitioners had not come with clean hands and the Will in question was obtained by them by fraud, coercion and undue influence to deprive her of her valid claim in the suit property. The Will was propounded to illegally usurp the entire estate of her father in which she had a share. The deceased had executed his last legal Will in December, 1996; registered on 29.01.1997. As per her parents' wishes, she along with her family had lived in the suit property from August, 1996 to 13.07.2000. Her parents were very old and had become frail and weak; they needed petitioners' company. However, they never took care of them; petitioner No.1 is a permanent resident of U.K. and the petitioner No.2 was away to Nagda due to his employment there. During her stay with the deceased, she used to take care of her parents. In the evening of 13.07.2000, both the petitioners ransacked the house and their personal belongings and she along with her family members was forced to vacate the suit property where she lived for the last around 47 months. It is further averred that the Will in question was not

executed by the deceased out of his own free will, choice and freedom. From perusal of the earlier Wills, it is clear that the deceased while executing a new Will invariably used to supersede his previous Wills by specifically referring to the earlier Will. The alleged Will is quite unlike the earlier ones and has been got executed without application of mind and in a desperate hurry. The petitioners did not disclose as to how deceased's brother Dr.Dharam Pal came into possession of the Will and why it was kept secretly for more than three years after his death. It is alleged that the petitioners after throwing her out of the suit property on 13.07.2000 took full control of the family house and the belongings and forced the testator to put his signatures on the Will. The petitioners continued to maintain solemn silence regarding the Will till the death of testator's wife and for 18 months thereafter.

4. It is further averred that attesting witness Anil Bhalla is petitioner No.1's friend and is a self-employed Chartered Accountant; he is his college-friend and his office is currently located on the second floor. The testator had never reposed confidence in Anil Bhalla; he is an interested party and used to stay with petitioner No.1 during his visits to U.K. The other attesting witness Praveen Vashist is an unknown entity. PW-Anil Bhalla and the petitioners do not know him. It has not been explained as to why the deceased got the Will drafted from Praveen Vashist when he used to get drafted earlier Wills from a known friend/relative. Apparently, the Will in question has not been drafted on the instructions of the deceased testator.

5. It is further averred that even the photograph of the testator affixed on the alleged Will portrays a person 15 – 20 years

younger as the testator was very frail and weak in July, 2000. Driving licence number mentioned on the alleged Will is fake as it had expired long back.

6. It is further pleaded that the testator had already disposed of the property bearing No.185, Sarojini Nagar in 1992-93 and had utilised the consideration / sale proceeds during his life time. It is further stated that the petitioners and Dr. Dharam Pal are in collusion with each other. She further claimed that the last Will signed by the deceased in his sound mental health, free of any bias was the one executed by him in December, 1996 registered in January, 1997 in which she was one of the beneficiaries. There was no occasion for the testator to deprive her of any share in the property in question. In the instant Will, the petitioners have got everything in their own favour.

7. The petitioners in the rejoinder controverted the assertions of the respondent No.2 and reiterated that the Will in question was a valid Will.

8. On the basis of the pleadings of the parties, following issues were framed by an order dated 03.10.2006 :

*“(i) Whether the Will dated 17th July, 2000 is the last Will duly executed by late Dr.Satya Prakash? If not, its effect? OPP
(ii) Relief”*

9. To establish its case, the petitioner No.1 examined himself as PW-1, besides examining PW-2 (Anil Bhalla), PW-3 (Usha Mahender Singh), PW-4 (Dr.Dharam Pal) and PW-5 (Sunil

Srivastava). Rita Gulati examined herself as RW1 besides producing RW2 (Vimal), RW3 (Sunita Harish) and RW4 (Desh Deepak Gulati).

10. I have heard the learned counsel for the parties and have examined the file minutely. Issue-wise findings are as under :

Issue No.1

11. The burden to prove this issue was upon the petitioners. Learned counsel for the petitioners urged that the Will (Ex.PW-1/X3) was duly executed by petitioners' father Dr.Satya Prakash on 17.07.2000. PW-2 (Anil Bhalla) – attesting witnesses to the Will proved its due execution and registration. In his deposition before the Court, Anil Bhalla stood by his testimony that he had put his signatures on the Will and the testator as well as the other attesting witness had signed it in his presence; he confirmed his presence at the time of registration of the Will. PW-5 (Sunil Srivastava) from the office of the Sub-Registrar proved that the Will in question was duly registered. PW-4 (Dr.Dharam Pal) to whom the Will in question was handed over after its execution supported the petitioners on all material facts. PW-3 (Usha Mahender Singh) proved that certificate (Ex.PW3/1) was issued by her husband and it confirmed that the deceased was in a fit state of mind.

12. Learned counsel for the petitioners further urged that no suspicious surrounding circumstance exists to suspect the execution and validity of the Will in question. Learned counsel for the petitioners urged that no evidence has been produced by the contesting respondents that the driving licence mentioned in the Will is an expired one or the photograph pasted on it is an old one. The tone and

tanner of the present Will is not different from the earlier Wills. Perusal of the earlier Wills reveals that the petitioners were always the primary beneficiaries of the property in question and their mother only had life interest in all the previous Wills. The respondent No.2 was given the Sarojini Nagar property and she did not have any share in the suit property. The Sarojini Nagar property was sold by the sister and it is so admitted by her husband in the cross-examination. Counsel further urged that the previous Wills were drafted by a lawyer Ms.Sunita Harish (RW-3). However, Will (Ex.PW-1/X3) was drafted by other individual as Ms.Sunita Harish started advising the husband of respondent No.2 i.e. respondent No.2A in legal matters. RW-4 (Desh Deepak Gulati) grudgingly admitted that Sunita Harish was his counsel in legal matters. Nothing suspicious transpired from the perusal of the earlier Wills and the present one. Testimony of PW-4 (Dr.Dharam Pal) is clear that he delivered the Will in question to the petitioners. It is further urged that there was no irregularity in the registration of the Will in question. Ex.RW-4/P4, a reply to the show cause notice dated 30.12.2009 of the Sub-Registrar clearly stated that there was no irregularity in the registration of the document in question. Use of any specific colour of ink was not mandatory. The witness was unable to respond as to what action was taken against the concerned official for any irregularity in the registration of the Will.

13. Learned Senior Counsel for the objector urged that the Will in question is not the last and final Will of the testator; there is doubt over the very execution and registration of the Will. The driving licence mentioned in the alleged Will is an expired one and the

photograph appearing on it is an old photograph of the deceased. The deceased was very methodical while drafting the Wills as is apparent from the earlier Wills wherein, in the recitals, he used to revoke the previous Wills. In the present Will, there are no details mentioned of the earlier Wills. The Will in question was not drafted by the same individual from whom the deceased used to get the Wills prepared earlier. In the present case, the Will has been drafted by an advocate from Tis Hazari Courts who has not been examined. The Will in question was allegedly executed on 17.07.2000 after three or four days when the objector was, forced along with her family to vacate the suit property. The Will did not see the light of the day for considerable period of about 4 years. No explanation has been offered as to what prevented Dr.Dharam Pal to hand over the Will in question to the petitioners earlier. The Will was not brought to the notice of the contesting respondent during the life time of her mother to avoid contest from her. PW-4 (Dharam Pal) did not explain as to why he did not disclose the existence of the Will of the deceased for so long.

14. It is further urged that the Will though allegedly executed on 17.07.2000 was never got registered. The deceased had executed another Will which in fact was got registered by him on 04.09.2000 and in the said Will, the objector was the beneficiary. Ex.RW-4/P1 dated 17.08.2009 is an RTI application seeking specific information with respect to Peshi Register No.21 and as to who was the beneficiary of the Will therein. The response (RW-4/P2) to it was that the Will was in favour of Rita Gulati registered at No.5965 in Book No.3, Volume No.219 at pages No. 141 – 142 on 04.09.2000. A

complaint was lodged by the contesting respondent regarding manipulation of the records of the Sub-Registrar with respect to the alleged Will. A show cause notice (Ex.RW-4/P3) dated 15.12.2009 was issued to the record keeper and SR-VII, in this regard. The response revealed that out of 111 documents registered vide Nos. 5887 to 5999, there were two discrepancies; (a) documents bearing registration Nos.5592 and 5593 had the same page number of 192, (b) in the said documents concerning Rita Gulati, the complainant, had thumb impression / finger prints in 'blue' ink whereas all other documents in the said books had thumb impressions / finger prints in 'black' ink. Learned Senior Counsel would urge that there was no compulsion for the deceased, with whom the contesting respondent had cordial relations, to deprive her of the share in the immovable property. The deceased Rita Gulati along with her family members had lived for a considerable time with her parents in the suit property and had taken care of them in the absence of her brothers who were out of Delhi one in UK and the other in Madhya Pradesh. In the earlier Wills, the contesting respondent was one of the beneficiaries and her exclusion in the present Will does not reflect the exact desire and will of the deceased. No reliance can be placed on the testimony of witness Anil Bhalla with whom petitioner No.1 had long friendship since college days. Anil Bhalla did not identify signatures of other attesting witness Praveen Vashist, Advocate; he even did not know as to who he was. Conflicting versions have been given by the witnesses produced by the petitioners as to when the Will in question was handed over by Dr.Dharam Pal; if so, to whom. It is also not clear if

Dr.Dharam Pal had handed over only the original Will in question or had also given photocopies of the earlier Wills. Nothing material has surfaced to show if the petitioners or Dr.Dharam Pal had ever apprised the contesting respondent about the execution of any Will executed by the deceased any time. Only when Rita Gulati happened to meet petitioner No.1 at Gymkhana Club on 08.06.2004, she confronted him for not giving her share in the suit land. PW-4 (Dharam Pal) is in collusion with the petitioners and has given a false statement. The Will in question was not registered as per law and various omissions in the process create serious doubts about its registration. The records produced by the office of Sub-Registrar pointed out various anomalies and an enquiry was conducted by the Department.

15. Reliance was placed on '*C.Masilamani Mudaliar & Ors. vs. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil & Ors.*', (1996) 8 SCC 525; '*Reena Jain (Smt.) & Anr. vs. Rajiv Kumar Saxena*', 2016 (159) DRJ 319; '*Jupudy Pardha Sarathy vs. Pentapati Rama Krishna & Ors.*', 2016 (2) SCC 56; '*H.Venkatachala Iyengar vs. B.N.Thimmajamma & Ors.*' AIR 1959 SC 443 (V46C56); '*Shashi Kumar Banerjee & Ors. vs. Subodh Kumar Banerjee since deceased and after him his legal representatives & Ors.*' AIR 1964 SC 529 (V 51 C 67); '*Smt.Jaswant Kaur vs. Smt. Amrit Kaur & Ors.*', AIR 1977 SC 74; and, '*Gopal Charan Mohanty & Anr. vs. Smt. Adarmani Mohanty & Ors.*', 1988 Civil Court Cases 317 (Orissa).

16. The Will in question (Ex.PW-1/X3) executed by the deceased Dr.Satya Prakash is a registered one. PW-5 (Sunil Srivastava) from the office of Sub-Registrar-VII, after comparison

with the original record brought by him, stated that the Will (Ex.PW-1/X3) has been registered in the Sub-Registrar's office vide registration No.5965 in additional book No.III, Vol. No.219 at pages No.141 to 142 on 04.09.2000 and it bore the signatures of the Sub-Registrar at point 'G'.

17. The Will in question bears signatures of the testator; it is attested by two attesting witnesses; one PW-2 (Anil Bhalla) and the other Praveen Vashist, Advocate. It fulfils the mandatory requirements of execution of the Will.

18. Testimony of PW-2 (Anil Bhalla) is very crucial; he being an attesting witness to the Will. In his Court statement as PW-2 he tendered evidence by way of affidavit (Ex.PW-2/X). On seeing Will (Ex.PW-1/X3), he informed that it contained his signatures at points 'X1' and 'X2' and that of Dr.Satya Prakash at portions 'Y1', 'Y2' and 'Y3'. He claimed that the Will in question was executed by the testator and he had put his signatures over it in his presence. He further stated that at the time of registration of the Will in question, he had gone to the office of the Sub-Registrar and had participated in the registration of the Will there.

19. This witness was cross-examined at length. In the cross-examination, he fairly admitted that petitioner No.1 i.e. Anil Prakash was acquainted with him since 1963-64 and they had studied together in college. He further disclosed that he was a Chartered Accountant and had his office at 18A, Nizamuddin West from the year 1972 to 2007. He elaborated that earlier his office was on the first floor but subsequently he shifted to 'barsati' as Dr.Dharam Pal, his landlord,

wanted space due to ailment of his wife. He further disclosed that deceased Dr.Satya Prakash was his friend's father and he used to meet him while going to 'barsati' or first floor office. He admitted his friendly relations with Dr.Dharam Pal. He also claimed that he used to visit the deceased at his residence three or four times a year but the deceased never discussed his family affairs with him. He further admitted that none of the sons of the deceased lived with him. He volunteered to add that as and when the sons visited Delhi, they used to stay with the deceased. He further admitted that in late 1990s, the respondent No.2 - Rita Gulati - testator's daughter along with her family members stayed with the deceased. During his visit that time, he found complete harmony in the family. He expressed ignorance if the deceased had executed Wills earlier from time to time. He further informed that in July, 2000, he was called by the deceased at his residence through his servant or his peon and requested him to sign the Will as a witness. When he reached the residence, the Will was already prepared. Mr.Vashist was also present at the time of execution of the Will. Wife of the deceased was not in the room where the Will was executed. He met Praveen Vashist for the first time on the day of execution of the Will; and had occasion to see him again at the time of registration of the Will in September, 2000. He further clarified that the deceased did not discuss with him anything about the Will; he himself had not read it before putting his signatures over there. He reiterated that the deceased signed the Will in his presence. He, however, did not remember as to how many times the deceased signed the Will. He further informed that he could not

identify the signatures of Praveen Vashist. About petitioner No.1's presence in Delhi, he admitted that he was in the town and was staying with the deceased on the day Will (Ex.PW-1/X3) was executed. He was, however, not aware if petitioner No.2 was in the town that time. When shown the document (Ex.PW-1/X9, consisting of five sheets including reverse side), the witness disclosed that it bore the deceased's signatures at points 'X1' to 'X7'. He admitted that he was not a witness to Will (Ex.PW-1/X9). Regarding health condition of the deceased at the time of execution of the Will (Ex.PW-1/X3), Anil Bhalla disclosed that he was in fine health.

20. The witness further stated that he had visited the office of Sub-Registrar in connection with registration of Will (Ex.PW-1/X3) in September, 2000 at INA. He met the deceased and Praveen Vashist in the office of Sub-Registrar. He was requested about two days before by the deceased to come to the office of Sub-Registrar. He had carried his passport to the office of Sub-Registrar. He admitted that in Will (PW-1/X3) under the initials of Sub-Registrar, the 'date' did not mention the 'year'. He, however, volunteered that 'year' was mentioned in the 'stamp' affixed over it. The deceased had introduced Praveen Vashist to him as an advocate. He was unaware if on the day of execution or registration of the Will Dr.Dharam Pal was in the town or not. He denied the suggestion that false statement was given by him.

21. On perusal of the testimony of the attesting witness in its entirety, it reveals that no material infirmities have been extracted despite searching cross-examination to disbelieve the statement of the

witness. No ulterior motive or extraneous consideration was imputed to the witness to make a false statement to favour the petitioners. Admittedly, Anil Bhalla had his office as Chartered Accountant in the premises in question on rent under Dr.Dharam Pal and was acquainted with the deceased. It was not unusual for the testator to request him to be an attesting witness to the Will. Mere familiarity and acquaintance of the witness with petitioner No.1 since his college days is not a factor to discard his testimony. No suggestion was put to the witness that the deceased had not put his signatures on the Will in question in his presence. Nothing was suggested if the deceased, Praveen Vashist and Anil Bhalla had not gone to the office of the Sub-Registrar in September, 2000 to get the Will in question registered. It was also not suggested if the deceased was not in sound health at the time of execution of the Will and was incapable to travel to the office of Sub-Registrar. Material facts deposed by the witness remained unchallenged in the cross-examination. His presence at the time of execution of the Will and at the time of registration was not challenged. Contrary to that, suggestion was put to the witness "It is correct that I was only called by the deceased, whereafter I signed the Will at his request, whereafter I returned and no other incident took place on the day of signing of the Will." Nothing was suggested to him in the cross-examination if the victim was coerced or influenced by the petitioners to execute the Will or to get it registered. The Will in question was executed on 17.07.2000; it was registered on 04.09.2000. During this period, there was no change in the deceased's mind to make any amendment to the Will in question. Nothing is on

record to show that during this period the deceased was compelled or forced or prevailed upon to execute the Will in question in favour of the petitioners.

22. In the cross-examination RW-1 (Rita Gulati) admitted that her father did not have any hatred or any ill-will against Mr.Bhalla and he was an independent person. RW-4 (Desh Deepak Gulati) admitted in the cross-examination that Mr.Bhalla enjoyed access to his father-in-law on day to day basis.

23. PW-4 (Dr.Dharam Pal) is the deceased's brother; he had 50% share in the property in question. There were cordial relations between the deceased and Dr.Dharam Pal. The deceased had handed over the Will in question to Dr.Dharam Pal after its execution and Dr.Dharam Pal had apprised the petitioners about the will in question subsequently. PW-4 (Dr.Dharam Pal) filed his evidence by way of affidavit (Ex.PW-4/X). In the cross-examination, he explained that whenever Dr.Satya Prakash prepared a fresh Will, he used to hand over it to him and he used to return the earlier Will. He did not retain photocopies of the earlier Wills. The last Will executed by Dr.Satya Prakash was perhaps in the year 1997. This Will of 1997 was handed over by him to the sons of Dr.Satya Prakash in 2004 on their demand : it was in sealed cover and he handed over the sealed cover to the petitioners. He had never read any of the Wills of Dr.Satya Prakash. The witness was shown photocopy of Will mark PW-4/X1. After reading its content completely, the witness responded that it was the same Will that had been handed over by him to the sons of Dr.Satya Prakash as the Will of 1997. He further informed that at the time of

execution of his last Will, Dr.Satya Prakash was aged around 77 years. He further elaborated that at that time he had very good health. His brother was absolutely methodical. He admitted that for two years prior to his death Dr.Satya Prakash has sound physical and mental health. He corroborated Anil Bhalla's statement that he was his tenant and had good relations with his brother and they were on visiting terms. He also admitted that Anil Bhalla was petitioner No.1's friend; petitioner No.1 used to visit India once or twice in a year during, the life time of Dr.Satya Prakash and his wife. Petitioner No.1's two daughters also used to visit India.

24. On scrutinising the testimony of this independent witness who had no animosity with deceased's daughter Rita Gulati, nothing has surfaced in the cross-examination to suspect his version. At the time of his examination before the Court, he was aged around 84 years and apparently had no extraneous consideration to make a false statement about handing over of the Will executed by his brother in 1997 to the petitioners in 2004. No specific reason was asked by the contesting respondent as to why the Will in question was not handed over to the petitioners before 2004. In the cross-examination, he disclosed that when the Will was demanded, it was handed over to the petitioners. Nothing was suggested to him that the deceased had not executed the Will in question or that the deceased was coerced by his sons to execute the Will in question in an attempt to deprive the contesting respondent her share in the property in question. Nothing was put to infer if any fraud was played by the petitioners in getting the Will in question executed, and if so, when and in what manner. In

the absence of any prior ill-will against the contesting respondent, Dr.Dharm Pal is not believed to make a false statement to favour the petitioners who were not even living in Delhi. The genuineness of the Will in question was not suspected in the cross-examination.

25. PW-1 (Anil Prakash) is one of the petitioners; he is the deceased's son. He filed his evidence by way of affidavit (Ex.PW-1/A) and claimed that the Will (Ex.PW-1/X3) was executed by his father in their favour. In the cross-examination carried out comprehensively on various dates by the contesting respondent, the witness answered all the queries raised by the defence counsel. He admitted that he was permanent resident of U.K; he was not present at the time of death of his mother but had joined her last rites. His brother, a chemical engineer was away to Nagda (M.P.) being in employment there. He claimed that they used to take care of his parents; he used to pay a sum of ₹9,000/- per month to the agency who had provided a maid Shakuntala to take care of his parents. He denied that Shakuntala was employed after the demise of his father till the death of his mother. Admitted case is that the respondent No.2 along with his family members had lived with the deceased before she vacated it on 13.07.2000. The witness denied if Rita Gulati was forced to vacate the suit premises on 13.07.2000. Admitted position is that after 13.07.2000, Rita Gulati and his family members did not stay in the suit premises.

26. The witness clarified that at the time of execution of the Will dated 17.07.2000, he was not present at the spot but was in Delhi. He did not know Praveen Vashist, Advocate. Admitting his friendship

with Anil Bhalla, he denied if Anil Bhalla had informed him regarding execution of the Will before 20.07.2000. The witness informed that at the time of registration of the Will in the office of the Sub-Registrar, he was not present there. From Dr.Dharam Pal he came to know that his father had registered the Will in the office of Sub-Registrar. He elaborated that date 23.01.2004 under PP No.A-6742253 on the original Will was the expiry date of the passport. He came to know about the earlier Wills executed by the deceased from his uncle Dr.Dharam Pal in May, 2004. The said Wills were handed over to him by his uncle. The photocopies of the Wills brought by the witness were exhibited as Ex.R1, Ex.PW-1/X1 & Ex.PW-1/X2.

27. He denied his acquaintance with Sunita Harish or Madan Gopal Harish. He admitted that he was not in India when earlier four Wills were made by his father. Will dated 17.07.2000 was not signed by his father in his presence; he did know when it was registered. He admitted that on 18.05.2004 his uncle had given the Will of his father to him as well as his brother to read. He further claimed that besides the said Will, Dr.Dharam Pal had also given him photocopies of the earlier Wills of his father. Regarding Sarojini Nagar property, he disclosed that it was sold by his father in 1991-92. He did not have any evidence to show that his father had given the entire consideration of the Sarojini Nagar property to respondent No.2. He denied the suggestion that the deceased did not give the consideration of the Sarojini Nagar property to respondent No.2. Regarding testator's health, he informed that he was excellent when he wrote the Will; he had no disease. Health of his mother was also good at the time and

she also used to run her household affairs. He had discussion regarding the Will in question with his sister respondent No.2 on 08.06.2004 and the copies of the Will and final Will were shown to her. Ex.PW-1/X7 and Ex.PW-1/X8 were the documents handed over by him to respondent No.2 with the Wills on her visit on 08.06.2004.

28. He admitted that there were two signatures of the testator at point 'F' on Ex.PW-1/X3. He volunteered to explain that these were the original signatures of Dr.Satya Prakash. The witness denied the suggestion that after the sale of the property at Sarojini Nagar, the deceased had renovated the suit property. The witness explained that it was renovated by him. He denied the suggestion that the Will in question was not executed by Satya Prakash out of his own free Will or that it was got executed by coercion. He also denied the suggestion that signatures over the Will in question were got copied and it was not signed originally by the deceased. He denied that the deceased never visited the office of Sub-Registrar for registration of the Will.

29. PW-1 (Anil Prakash) was not a witness to the Will; it was neither executed nor registered in his presence. He came to know about the Will in question only when Dr.Dharam Pal handed over it to the petitioners in May, 2004. Nothing was suggested if Anil Bhalla was influenced to put his signatures on the Will in question or that the deceased had not put his signatures on the Will in his presence. Merely because, Anil Prakash was one of the beneficiaries in the Will, his statement without any infirmities cannot be discarded on that score alone. The witness was in possession of not only the Will in question but also photocopies of the earlier Wills admittedly executed by the

deceased from time to time. Anil Prakash produced the photocopies of the earlier Wills and these were exhibited as PW-1/D1 to PW-1/D4. The witness, however, informed that he had not seen the original Wills.

30. In the Will under challenge, indisputably, the contesting respondent Rita Gulati was not a beneficiary. The testator had given valid reasons for her exclusion. It was stated in the Will that Rita Gulati was married and was living separately with her husband. She had been properly and fully provided for during her marriage and had also been looked after and taken care of on and of. He (the testator) had also provided her funds to acquire property etc. She was therefore not given any share in the property under this Will.

31. It was urged by the learned counsel for the petitioners that the sale-proceeds of the property at Sarojini Nagar were given to the objector by the deceased during his life time. This was vehemently denied by the contesting respondent. In her evidence by way of affidavit (Ex.RW-1/X), she did not claim if sale-proceeds of the property at Sarojini Nagar were given to her. In the cross-examination, she expressed ignorance as to how much money was received by her after sale of Sarojini Nagar property. She, however, admitted that the said money was given to her husband. RW-4 (Desh Deepak Gulati), testator's son-in-law and husband of Rita Gulati admitted in the cross-examination without any inhibition that he had received a sum of about ₹16 or ₹17 lacs from the sale-proceeds of Sarojini Nagar property of his father-in-law sold by him. He, however, denied that the amount received was much higher and it was

in crores. He avoided to answer as to how much was the sale consideration of the said property. He volunteered to inform that it was sold somewhere in 1992. Needless to say, even ₹16 / ₹17 lacs had considerable value in 1992. The sale proceeds of the Sarojini Nagar property given to the objector could be a reason for her exclusion in the property in question.

32. The execution of the earlier Wills from time to time by the deceased are not at issue. The Will (Ex.PW-1/D2) was executed by the deceased on 21.11.1990. As per this Will, the property in question was to pass on to Anil Prakash and Sushil Prakash as absolute owners in equal shares. His daughter Rita Gulati would have no right, title or interest in the said property. Flat-cum-shop mentioned in para (b) i.e. property bearing No.185, Sarojini Nagar market, Sarojini Nagar, consisting of ground floor and first floor was to go to his daughter Rita Gulati as absolute and complete owner thereof. Anil Prakash and Sushil Prakash would have no right and interest in the said property. Apparently, Rita Gulati had no share even at that time in the property in question.

33. Will (Ex.PW-1/D3) was executed in December, 1992. As per this Will of course, testator's wife was given life interest in the immovable property.

34. Another Will (Ex.PW-1/D4) was executed on 19.05.1995. As per this Will, the property in question was to be sold and out of the sale proceeds, ₹5 lacs were to be paid to the surviving husband of Vidya (testator's late sister) or in case of his death to their legal heirs; ₹5 lacs to another sister Leela. The remainder amount was

to be distributed between the petitioners and testator's wife in equal shares. In case of death of testator's wife, her 1/3rd share was to go to Rita Gulati. Proceeds of Fixed Deposits Receipts were to devolve upon the person with whom the testator had Joint Account. Again, no share was given in the property in question to Rita Gulati.

35. Still another Will (Ex.PW-1/D-1) was executed by the deceased Dr.Satya Prakash in December, 1996 revoking earlier Wills. Contention of the objector is that it was the last Will executed by the testator and she was one of the beneficiaries. As per the Will, the suit property was to be sold and out of the sale proceeds, both the petitioners were to be paid ₹10 lacs each; ₹6 lacs were to be paid to the surviving husband of testator's late sister Mrs.Vidya and another sum of ₹5 lacs to sister Leela. After payments to the sons and sisters, the remainder amount was to be distributed in three equal shares; one each for both the petitioners and the third to the daughter (Rita Gulati) after payment of all taxes, liabilities etc. on his share of the property. It was also noted that all the children would look after his wife but she would live with his daughter as long as she was alive and she (Rita Gulati) would take care of her day-to-day needs.

36. On scanning 1996 Will, it reveals that the major portion of the sale proceeds of the suit property was bequeathed to the petitioners and other beneficiaries. Rita Gulati was given certain share in the sale proceeds seemingly to enable her to maintain testator's wife.

37. This Court finds no sound reasons to infer that Will (Ex.PW-1/D1) was the last Will executed by the deceased. The

objector or any other beneficiary in the said Will did not file any probate proceedings any time. After the execution of the said Will, the relations between the petitioners and objectors became strained. Admittedly, the objector had started living with her parents in 1996. She, however, vacated the premises in question on 13.07.2000. The Will in question came into existence thereafter. Even after coming to know about the existence of 1996 Will in 2004, the objector never sought any probate.

38. From the Wills executed earlier by the deceased, it cannot be inferred that the objector was beneficiary to the exclusion of the petitioners in the suit property or that the deceased ever desired to provide her any share in the immovable property. Since the petitioners were always major beneficiaries in the suit property in all the Wills, it cannot be believed that they would fabricate the Will in question.

39. It is urged by the learned Senior Counsel for the objector that driving licence mentioned in the Will (Ex.PW-1/X3) i.e. DL No.86660869 has expired long back. No credible evidence has emerged on record as to what was the number of the driving licence issued to the testator on the relevant date. The original driving licence of the testator has not been produced. No record from the concerned transport authority has been requisitioned to find out if the driving licence depicted in the Will in question had expired, and if so, when. It is true that 1996 Will (Ex.PW-1/D1) contained the driving licence No.DL/01/003/279326. Again, it was not explained as to when the driving licence mentioned in 1996 was to expire. Possibility of the

deceased to have got issued new driving licence after the expiry of the driving licence mentioned in 1996 Will cannot be ruled out. Besides this, identity of the deceased and his signatures on the Will in question are not at issue. Similarly objector's submission that the photograph affixed on the Will in question was not a recent one and appeared to be 15 – 20 years old is inconsequential. Again, the identity of the executor of the Will is not under challenge. The photograph is of the testator on the Will in question and there is no evidence on record that it is an old photograph.

40. On perusal of the pleadings of the parties and documents on record, it reveals that the objector has not denied the execution of the Will in question by the deceased; she has not denied that signatures appearing on the Will are not that of the deceased. Her only contention is that the Will in question was got executed by playing fraud, coercion or undue influence upon the testator and it was not executed by him with his free consent. The objector has, however, failed to produce on record any cogent and clinching evidence to show or prove that the testator was coerced to execute the Will in favour of the petitioners. After her exit from the suit premises on 13.07.2000, seemingly the objector or her family members avoided to visit the deceased and his family in the suit property. It is not on record if the objector and her family members used to visit the deceased at any time. No complaint whatsoever was lodged by the objector against the petitioners for forcibly evicting her from the suit premises on 13.07.2000. She did not report the incident to the police or any other authority if the deceased was tortured any time on 13.07.2000 or

thereafter by the petitioners. It is on record that the petitioner No.1 was permanent resident of U.K. and petitioner No.2 was away to Nagda (M.P.). Objector's parents never lodged any complaint against the petitioners for their conduct and behavior. Objector's mother remained alive for around 2 years after the testator's death. Nothing has emerged if the relations between the petitioners and their mother were not cordial. In the absence of any positive evidence, it cannot be inferred that the petitioners played fraud upon the deceased testator to execute the Will in question. Rita Gulati in the cross-examination admitted that her brothers used to take care of her parents.

41. Another suspicious circumstance which was highlighted by the learned Senior Counsel for the objector is that a fake Will in question was replaced in the records of the Sub-Registrar replacing the 1996 Will. The allegations are vehemently denied by the petitioners. The Will in question came to the knowledge of the objector in June, 2004. At no stage soon thereafter she lodged any complaint regarding substitution of a fake Will in lieu of 1996 Will in the record of the Sub-Registrar. A complaint was lodged by the objector in November, 2009. Ex.RW-4/P3 reveals that show cause notice was issued to Rama Shankar, Sub-Registrar 7, INA, New Delhi and Sunil Srivastava, LDC, Record Keeper, SR-VII office on 15.12.2009 on the objector's complaint alleging that a fake Will was fraudulently appended in SR-VII book in August, 2009. It was further alleged that two Wills had same number in different books which showed that there was tempering. It was further informed that out of 111 documents registered vide Nos. 5887 to 5999 in Volume No.219,

Book No.III of SR-VII office, documents bearing registration Nos.5592 and 5593 had the same page number i.e. 192 and only the documents concerning the objector, the complainant had put thumb impression / finger prints in 'blue' ink whereas in other documents in the said book 'black' ink was used. Ex.RW-4/P4 is the response by Rama Shankar, Sub-Registrar to the show cause notice. In response, he stated that only one Will bearing registration No.5965 pasted in Book No.III, Volume 219 pages 141-142 dated 04.09.2000 was lying with the office of SR-VII, INA, New Delhi and no other Will with the same registration No.5965 was pasted in any other book. It was denied if there was any tempering / replacement / appendment in the Will lying in the record of the SR-VII, New Delhi. Regarding the same page number of 192 at the registration No.5592-5593, it was clarified that it could be due to clerical error being manual procedure existed at that time. Regarding the use of particular ink it was elaborated that there was no compulsion to use 'blue' or 'black' ink to obtain thumb impressions and finger prints / impressions as per the Registration Act, 1908. The available 'black' ink was used to obtain the thumb / finger prints. It was further claimed that the allegations made by the objector were fake. Similar response to the show cause notice was given by Sunil Srivastava on 30.12.2009 where he claimed that there was no tempering or replacement of the Will in the record. The objector has failed to show if any action whatsoever was initiated against any individual for the alleged replacement of the Will. The petitioners examined PW-5 (Sunil Srivastava) who proved Ex.PW-1/X3 after comparing it with the original record brought by him. He

was categorical to state that the said document was registered in the Sub-Registrar's office vide registration no.5965 in additional book No.III, Volument No.219 at page Nos. 141 to 142 on 04.09.2000. In the cross-examination, he admitted that at point 'H' on Ex.PW-1/X3 a number was there and it is used to be entered in the 'Peshi Register'. He, however, informed if he had any knowledge regarding maintenance of 'Peshi Register'. Peshi Register No.21 containing entry about the Will executed by S.Prakash against entry No.14A54 dated 25.09.2000 was brought by the witness and photocopy of the relevant page containing the said entry was exhibited as PW-5/A. Nothing was suggested to the witness if there was any tempering with the record.

42. The objector examined RW-2 (Vimal) who brought the original record i.e. Volume No.695, Book No.III containing registration No.1221 at pages No.200 to 202, the photocopy of which were Ex.PW-1/D1 and mark Ex.PW-4/X1. He further disclosed that the documents submitted for registration are always pasted in the register by their office; they also make entries of the registered documents in a separate 'Peshi Register' in which name of the beneficiary of the Will is not recorded, though the name of the testator is recorded. He did not state if there was any replacement of the original Will with fake one. In the cross-examination, he disclosed that the entries in the 'Peshi Register' were done on day-to-day basis as and when the documents are registered. The said entries in the 'Peshi Register' were done by the record clerk. He volunteered to add that since computerization in 2003, automatic entries are generated in

the peshi records, the moment a document is registered. Peshi Register is maintained for manual checking of records and these are not verified by any senior officer.

43. Apparently, no cogent evidence has emerged on record if the Will in question was a fake one or that it was replaced with 1996 Will in the record of the Sub-Registrar. Minor irregularities in the record highlighted by the learned Senior Counsel regarding omission to disclose the year in which the Will in question was registered under the signatures of the Sub-Registrar; the use of 'blue' ink at the time of getting thumb impressions instead of 'black' one; name of Rita Gulati appearing as beneficiary in the 'Peshi Register' etc. *per se* are not material to suspect the registration of the Will in question on 04.09.2000. The objector did not summon the concerned Registrar to get clarification on these omissions. In response to the show cause notice issued by the concerned authority the Sub-Registrar in response clarified the inconsistencies / omissions. Apparently, the concerned authority was satisfied with the response given by the Sub-Registrar and seemingly no further action was taken against the concerned Sub-Registrar or the LDC. Ex.PW-1/X3 reveals that the 'year' number finds mentioned in the 'stamp' affixed over it. The Sub-Registrar had put his signatures and beneath it, the date has been given.

44. In '*Meenakshiammal (Dead) through LRs & Ors. vs. Chandrasekaran and Anr.*', AIR 2005 SC 52; MANU/SC/0953/2004, the Supreme Court observed that once the propounder proves that the Will was signed by the testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect

of the disposition and put his signatures out of his own free will, and that he signed it in the presence of the witness who attested it in his presence, the onus, which rests on the propounder is discharged and when allegation of undue influence, fraud or coercion is made by the caveator, the onus is on the caveator to prove the same. The objector, in the instant case, has failed to prove if the Will in question was forged or fabricated; or it was a fake one. The objector has further failed to prove if any fraud was played by the petitioners upon the testator to get the Will in question executed.

45. Learned Senior Counsel urged that in the Will the testator had given 'life interest' to his wife. Relying upon the authority '*C.Masilamani Mudaliar & Ors. vs. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil & Ors.*' (supra), it was submitted that under Section 14 of the Hindu Succession Act, the testator's wife got absolute right in the property in question.

46. These submissions to my view are unacceptable. These issues cannot be raised in the present petition filed under Sections 276 and 278 Indian Succession Act, 1925 to seek Probate or Letters of Administration. This Court is primarily concerned to find out if a valid Will was executed by the testator and if they were entitled for the Probate / Letters of Administration qua the suit property bequeathed in their favour. No such plea that the testator's wife had become absolute owner of the property in question under Section 14 of the Hindu Succession Act was taken or pleaded in the written statement; no issue was framed in this regard. Only during the course of arguments, this plea regarding the testator's wife to have become

absolute owner of the property in question was raised. On perusal of the Will Ex.PW-1/X3, it transpires that the suit property was bequeathed by the testator to the petitioners and the wife was given the right and entitlement to free residence in the property during her life time. It was specifically noted in the Will that the property was to devolve upon both the petitioners in equal shares. The Will did not confer any 'life interest' in the suit property in favour of testator's wife. Apart from this, testator's wife has since expired. At no stage during her life time, she ever claimed any such interest in the suit property.

47. The citations relied upon by the learned Senior Counsel for the petitioners are not applicable to the facts and circumstances of the case as the present proceedings pertain only for the grant of probate. The said judgments were delivered where the right, title or interest were at issue in civil proceedings. Grant of probate cannot be decisive for declaration of title. In '*Kanwarjit Singh Dhillon vs. Hardyal Singh Dhillon and Ors.*', 2007 (11) SCC 357, decided on 12.10.2007, the Hon'ble Supreme Court held :

"11. In Chiranjilal Shrilal Goenka v. Jasjit Singh and Ors. MANU/SC/0496/1993 : [1993]2SCR454, this Court while upholding the above views and following the earlier decisions of this Court as well as of other High Courts in India observed in paragraph 15 at page 515 which runs as under:

In Ishwardeo Narain Singh v. Smt. Kamta Devi this Court held that the court of probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased

person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the probate court. Therefore, the only issue in a probate proceeding relates to the genuineness and due execution of the will and the court itself is under duty to determine it and peruse the original will in its custody. The Succession Act is a self-contained code insofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate court. This is clearly manifested in the fascicule of the provisions of the Act. The probate proceedings shall be conducted by the probate court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the will annexed establishes conclusively as to the appointment of the executor and the valid execution of the will. Thus, it does no more than establish the factum of the will and the legal character of the executor. Probate court does not decide any question of title or of the existence of the property itself.

That being the position and in view of the nature of allegations made in the plaint, we do not find any reason as to how the High Court as well as the civil court could come to a conclusion that after the probate of the Will executed by late S. Kirpal Singh was granted, the suit for declaration for title and injunction on the above allegation could not be said to be maintainable in law. The High Court also while holding that the suit was not maintainable, in view of the probate granted of the Will of late S. Kirpal Singh had relied on a decision of this Court, as noted herein earlier, in the case of Rukmani Devi (supra). We are not in a position to agree with the High Court that this decision could at all be applicable in the facts and circumstances of the present case. A

plain reading of this decision would not show that after the grant of probate by a competent court, the suit for title and permanent injunction cannot be said to be maintainable in law. What this Court held in that decision is that once a probate is granted by a competent court, it would become conclusive of the validity of the Will itself, but, that cannot be decisive whether the probate court would also decide the title of the testator in the suit properties which, in our view, can only be decided by the civil court on evidence. It is true that the probate of the Will granted by the competent probate court would be admitted into evidence that may be taken into consideration by the civil court while deciding the suit for title but grant of probate cannot be decisive for declaration of title and injunction whether at all the testator had any title to the suit properties or not.”

48. Another contention raised by the learned Senior Counsel for the respondent is that the Will in question was got drafted from Praveen Vashist, Advocate and not from RW-3 from whom the earlier Wills were got drafted. This circumstance itself is of no consequence. It has come on record that RW-3 was the counsel of objector's husband in legal matters. The objector did not summon or produce Praveen Vashist to ascertain as to how and in what manner, he put his signatures as an attesting witness on the Will in question.

49. Regarding delay of four years in handing over the Will, it is not very material. In '*Sridevi and Ors. vs. Jayaraja Shetty and Ors.*', MANU/SC/0065/2005; AIR 2005 SCC 780, Hon'ble Supreme Court held that delay of four years in getting the Will registered was inconsequential. It was explained that it was not necessary to get the

Will registered but still the respondents got it registered after 3 or 4 years only to lend authenticity to the Will. The Will was got registered on the advice of a lawyer to enable them to produce it before various authorities. It was held that the registration of the Will in the year 1980 itself did not cast a doubt regarding the execution of the Will in the year 1976.

50. In the light of the above evidence, this Court is of the view that the Will (Ex.PW-1/X3) was really and voluntarily executed by deceased Dr.Satya Prakash in favour of the petitioners.

51. This issue is decided in favour of the petitioners and against the respondents.

Issue No.2

52. In view of the findings on issue No.1, the petition is allowed and the petitioners are granted Letters of Administration with a copy of the last and final Will dated 17.07.2000 (Ex.PW-1/X3) of the deceased annexed thereto to administer the estate of the deceased to the extent of his one half share in the property bearing No.18-A, Nizamuddin West, subject to their paying requisite Court Fee in terms of the valuation report and furnishing administrative bond with one surety, to the satisfaction of the Registrar General of this Court in accordance with law.

**(S.P.GARG)
JUDGE**

FEBRUARY 06, 2018 / tr