

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: December 06, 2018

Judgment delivered on: December 18, 2018

+ FAO(OS) 15/2018 & CM. No. 3021/2018
JASDEEP SINGH KALSI

..... Appellant

Through: Mr. Raman Kapur, Sr. Adv. with
Mr. Mohit Khanna, Adv.

versus

THE STATE & ORS.

..... Respondents

Through: Mr. Sanjeev Sindhvani, Sr. Adv. with
Mr. Aman Nandrajog, Adv. for R-2

AND

+ FAO(OS) 19/2018 & CM. No. 3261/2018
JASDEEP SINGH KALSI

..... Appellant

Through: Mr. Raman Kapur, Sr. Adv. with
Mr. Mohit Khanna, Adv.

versus

THE STATE & ORS

..... Respondents

Through: Mr. Sanjeev Sindhvani, Sr. Adv. with
Mr. Aman Nandrajog, Adv. for R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. These two appeals have been filed by S. Jasdeep Singh Kalsi challenging the order of the learned Single Judge in TEST.CAS. Nos. 57/2009 and 40/2016, whereby the learned Single Judge has granted probate of the Will dated July 01, 1997 registered on December 15, 1997 ((Ex.RW-3/1) in favour of joint executors Anil Dip Singh Kalsi and Jasdeep Singh Kalsi. The Testamentary Case No.57/2009 was filed by Anil Dip Singh Kalsi, who sought probate of the Will dated July 01, 1997 which was duly registered on December 15, 1997, whereby the Anil Dip Singh Kalsi was bequeathed the entire property of P-83, NDSE, Part-II.

2. The Probate Case No. 40/2016 was filed by S. Jasdeep Singh Kalsi and Harpreet Singh Kalsi as a Probate Case No.177/2007 claiming share in the property number P-83, NDSE, Part-II, as per the registered Will dated December 21, 1987 before the learned District Judge. In the said Probate Case i.e. No.177/2007, the objections were filed by Anil Dip Singh Kalsi (petitioner in Testamentary Case No.57/2009). The learned District Judge decide the issue on validity of Will dated

December 21, 1987 and granted a Probate Certificate in favour of S. Jasdeep Singh Kalsi and Harpreet Singh Kalsi. As the issue of propounding the Will dated July 01, 1997 was pending before the High Court and *sub-judice*, thus the said issue was not decided.

3. Anil Dip Singh Kalsi challenged the order dated July 10, 2014 passed by the learned ADJ by filing FAO No.34/2014, wherein with the consent of the learned Counsel for both the parties the judgment dated July 10, 2014 and the subsequent correction made on July 21, 2014 was set aside. The Probate Case No.177/2007 was transferred to this Court and numbered as Testamentary Case No.40/2016.

4. It may be stated here that the learned counsel for the parties had consented that the evidence led in Probate Case No.177/2007, re-numbered as Testamentary Case No.40/2016 would be read in both the Testamentary cases and the validity of the two Wills in both the Testamentary Cases be decided together.

5. Whereabouts of Late Shri Ajit Singh Kalsi, R/o P-83, South Extension, Part-II were not known since May 18, 2000 having been last seen on May 17, 2000. He has not been heard for 7 years by those who would have naturally heard of him if he

had been alive, in terms of Section 108 of the Indian Evidence Act, Sardar Ajit Singh Kalsi would be deemed to be dead on May 18, 2000. Sardar Ajit Singh Kalsi was survived by five sons namely Gurmeet Singh Kalsi, Ranbir Singh Kalsi, Anil Dip Singh Kalsi, Harpreet Singh Kalsi and Jasdeep Singh Kalsi, his wife Smt. Kamal Kalsi having pre-deceased him.

6. To propound the first Will, Jasdeep Singh Kalsi examined Vibhu Kapoor an attesting witness of the first Will as PW-1 and himself as PW-2. By virtue of the first Will Ex.PW-1/A equal shares were granted to the five sons of Ajit Singh Kalsi in the Dehradun Property known as 'Kalsi Villa' Dehradun and the land attached thereto, however, the property bearing No.P-83, NDSE was bestowed as under:

"1) Shri Jasdip Singh Kalsi – The ground floor of the said house which is at present self occupied and Barsati at second floor with the toilet and small kitchen in the stairs (which is at present occupied by Shri Jasdip Singh Kalsi). The second floor Barsati along with small kitchen in the stairs and toilet will be made available to Ranbir Singh and or Harpreet Singh in case these are required for their temporary residence. All moveable property, shares, deposits in Bank etc. will go to Shri Jasdip Singh Kalsi and nobody else will have any share or title to the said property. 2) Shri Harpreet Singh Kalsi – The first floor (at present on rent) of the above house No.P-83, N.D.S.E. II will go to my son Shri Harpreet Singh Kalsi absolutely and he will be entitled to deal with it

in any manner he likes. 3) Shri Anil Deep Singh Kalsi – The second floor of the above house No.P-83, N.D.S.E.II (except the old room, toilet and small kitchen in the stair) will go to my son, Shri Anil Dip Singh Kalsi and he will be absolute owner of the same. He has already built the second floor with his own funds, and has shifted there. The stair and passage to the ground, first and second floor shall be common property of all my above three sons. I hereby appoint Shri Jasdip Singh Kalsi my youngest son as the executor of my above will.”

7. As per the second Will registered on December 15, 1997 the property at Dehradun i.e. Kalsi Villa along with its adjoining land was bequeathed on all the five sons with equal shares with absolute power of the disposal over the same, however the property P-83, South Extension was to devolve on Anil Dip Singh Kalsi after the demise of the deceased without any claim from any of the other sons with absolute power of disposal over the same and to enjoy the fruit of the said property. To propound the second Will, Anil Dip Singh Kalsi examined himself as RW-1, Radhey Shyam Sharma, Record Keeper, Office of Sub-Registrar-V as RW-2 and the attesting witness of the Will Shivdev Singh as RW-3.

8. Anil Dip Singh Kalsi challenges the first Will dated December 21, 1987 on various grounds. The grounds as noted by the learned Single Judge in Para 9 of the impugned judgment read

as under:

“9. Challenging the first Will dated 21st December, 1987 learned counsel for Anil Deep Singh Kalsi contends that the attesting witness to the Will Vibhu Kapoor (PW-1) is an interested witness and a very close friend of Jasdeep Singh Kalsi. Thus, his testimony cannot be relied upon. The first Will was not executed by testator of his own free volition for the reason Jasdeep Singh Kalsi was present at the time of execution of the Will and he influenced the deceased to make the Will in his favour. Even otherwise, if this Court comes to the conclusion that the first Will is a legal and valid Will, the same stands superseded by the second Will. The genuineness or the validity of the second Will is also evident from the memo of parties in Testamentary Case No.57/ 2009 as the first Will was executed when Harpreet Singh Kalsi and Jasdeep Singh Kalsi were not married, however thereafter Jasdeep Singh Kalsi also got married and settled in USA. Thus Anil Deep Singh Kalsi was only residing in Delhi with his parents and looking after their day-to-day meals. Since Gurmeet Singh Kalsi was residing in Kalsi Villa, Claimant Town, Dehradun and Ranbir Singh Kalsi, Harpreet Singh Kalsi and Jasdeep Singh Kalsi in USA, it was natural for the deceased to have executed the second Will bequeathing property P-83, South Extension, Part-II in favour of Anil Deep Singh Kalsi. In respect of the property at Dehradun i.e. Kalsi Villa, Dehradun, U.P., the testator’s stand in the two Wills was consistent that it was to bequeath on all the five sons in equal shares. Merely because the attesting witness to the second Will was a stranger would be no ground to discard the genuineness of the said Will. Anil Deep Singh Kalsi did not have in his possession the original Will which appears to have been taken away by Jasdeep Singh Kalsi and others as they filed a criminal case against Anil Deep Singh Kalsi and his wife Anita Kalsi alleging kidnapping of their father after he

went missing on the 8th May, 2000. Despite the fact that Anil Deep Singh Kalsi and Anita Kalsi were subjected to lie detector test nothing was revealed and the criminal case had to be closed. It is only later in the year 2007 that Anil Deep Singh Kalsi found copy of the Will dated 1st July, 1997 and filed his objections to the probate petition filed by Jasdeep Singh and Harpreet Singh as also the Testamentary Case No.57/2009. The delay in registration of the second Will though executed and presented on 1st July, 1997 but registered on 15th December, 1997 cannot be attributed to Anil Deep Singh Kalsi as the same is an administrative act beyond his control. Further no onus is shifted on Anil Deep Singh Kalsi to explain the delayed registration of the second Will nor can the validity of the said Will be challenged on the said ground. The second Will dated 1st July, 1997 registered on 15th December, 1997 being the last and valid Will executed by the deceased and duly registered would prevail over the first Will dated 21st December, 1987.”

9. Similarly, the grounds on which the Jasdeep Singh had contested the second Will are the following:

“10. Learned counsel for Jasdeep Singh the only contesting respondent in Testamentary Case No.57/2009 challenging the Second Will contends that a bare perusal of the second Will makes it unnatural. The deceased was a well-read person and the second Will nowhere mentions about the execution of the earlier Will which was also duly registered. Further the attesting witness of the said Will was one Shiv Dev Singh who was not known to the family nor to the deceased except that for three or four years he had been meeting the deceased on Sundays at Gurudwara, Bangla Sahib. The conduct of the attesting witness Shiv Dev Singh is unnatural as after the execution of the Will when it is revealed that it would not be registered at the office of SDM

Mehrauli, he accompanied the deceased to INA to get the Will registered.”

10. The learned Single Judge in Para 14 has held that on the basis of the evidence on record, it can safely be held that the deceased Ajit Singh Kalsi executed the first Will dated December 21, 1987 (Ex.PW-1/A). On the second Will, the learned Single Judge has held that the same has been validly executed. In other words, both the Wills Ex.PW-1/A and Ex.RW-3/1 are validly executed and accordingly granted the relief which has already been reflected above.

11. Mr. Raman Kapur, learned Senior Counsel appearing for the appellant has submitted firstly with regard to the second Will as under:

(i) Will dated July 01, 1997 is registered with the Sub-Registrar of Assurances Sub District-V (South) (Mehrauli) on December 15, 1997. One of the attesting witness upon the will is Shiv Dev Singh S/o S. Gundit Singh, R/o B-54A, Fateh Nagar, New Delhi, who appears as RW-2. The other witness is Shri H.M. Nayyar, Advocate who drafted the Will.

(ii) The respondent No.2 in order to prove the Will relies upon the witness, who appears as RW-2 in Probate Petition No.

34/13/2007 as Shiv Dev Singh S/o Gurdit Singh, R/o B-54A, Fateh Nagar, New Delhi. The said witness in his examination in chief states that he used to meet the deceased at Gurudwara Bangla Sahib on every Sunday since 1995-2000; on the request of Ajit Kalsi, he took him to his known lawyer Shri H.M. Nayyar at Mehrauli and the will was typed there, signed by the testator & the attesting witness in presence of each other. The witness however in his examination in chief does not talk about the registration of the Will.

(iii) In his cross examination, it is stated by RW-2:-

(a) He met Ajit Kalsi by chance and was not introduced to him. (as per the statement recorded in the FIR dated June 20, 2000 it is stated by him that his father used to visit Gurudwara at Masjid Moth and not Gurudwara Bangla Sahib).

(b) Neither Ajit Kalsi ever visited his house, nor did he visit his house.

(c) He does not know how many children do Ajit Kalsi has.

(d) Ajit Kalsi was about 70-72 in the year 1995. (As per the petitioner his father was about 81 years in the year 1995).

(e) The witness discloses that they came to know that the present Will cannot be registered at Mehrauli and was therefore

registered at INA on the same day i.e July 01, 1997. (The Will is registered with office of Sub Registrar V, which happens to be at Tehsil Building Mehrauli. Office of Sub-Registrar INA is VII). The Will is registered subsequently on December 15, 1997 and not on the date of its execution. The said fact also stands proved from the evidence of Radhey Shyam Sharma RW-3 UDC / Record Keeper who came from the office of Sub Registrar Mehrauli.

(f) The Will was read over by Ajit Kalsi and also Mr. Nayyar read the contents of the Will to him in the presence of the witness which mentions Ajit Kalsi having five sons. However, the witness says that he was told by Ajit Kalsi that he has only one son.

(g) He did not know when Ajit Kalsi died. He came to know about the same in the year 2006-07 when the petitioner and his wife visited him and showed him the Original Will.

(iv) The other evidence relied upon is the testimony of the respondent No.2 Anil Dip Singh Kalsi who appeared as RW1. It is stated by him:-

(a) The execution of the earlier Will dated December 21, 1987 is not denied. However it is superseded by the present Will.

(b) That his father was a well read man. In the present Will dated July 01, 1997 it is mentioned that the said Will is the First and Last Will of the deceased. Admittedly there is an earlier Will which has not been revoked. S. Ajit Kalsi was a well read man. He was BA LL.B. and retired as Manager-Engineer Air India. In case he would have executed the present Will, he would have definitely mentioned as regards the revocation of the earlier Will. (The earlier Will is in fact drafted by him).

(c) In contradiction to the deposition of RW-2, Anil Dip Singh Kalsi, states in his reply to the probate petition that his father late S. Ajit Singh Kalsi was a regular visitor at Gurudwara, Masjid Moth.

(d) In his cross examination dated April 27, 2011, it is stated by him that the original Will was stolen by his brothers when his brothers visited India in the year 2000, learning about the disappearance of their father, and at that time they removed the subsequent Will dated July 01, 1997. However, despite the said fact, no action has taken by Anil Dip Singh Kalsi notwithstanding that parties had filed complaints and counter complaints against each other. Further, in Probate Petition filed by Anil Dip Singh Kalsi, it is not mentioned by him as to the original Will being

stolen. As a matter of fact, nothing is mentioned as regards the original Will or the same having been stolen or not traceable in the entire petition.

(e) In contradiction to above deposition, it is deposed by Shiv Dev Singh that the petitioner along with his wife showed him the Original Will.

(f) It is further stated by him that the copy of the Will was found by him in the year 2007, upon going through the old papers. Suffice to state that for seven years i.e from year 2000 to 2007 the old papers of the father were lying there without being touched, and incidentally Anil Kalsi while going through these papers in the year 2007 found the copy of the Will, and for the first time came to know about the Will dated July 01, 1997.

(g) From the aforesaid, it is also manifest that Late Sh. Ajit Kalsi, despite staying with them, never told Anil Kalsi as regards the execution of the Will dated July 01, 1997.

(h) As per the earlier Will dated December 21, 1987, the second floor of the property was bequeathed to Anil Dip Singh Kalsi as the deceased father had permitted him to raise the second floor. It is stated by him that his father has given him the entire property as he was still struggling in life despite the same he

states that he was looking after his father and also providing for his medical expenses. It is established on record that the deceased father late S. Ajit Singh Kalsi had Rs.14.00 Lakh in his account and was not at the mercy of his son Anil Dip Singh Kalsi for his expenses.

(i) As regards the suit for injunction filed by S. Jasdeep Singh Kalsi in the year 2000, it was mentioned by him in the said suit with regard to the Will having been executed by his father wherein in Para 5 the devolution of property as in terms of Will dated December 21, 1987. The said suit was compromised inter-se the parties and statement of Anil Dip Singh Kalsi being defendant No.2 in the said suit was also recorded. Pertinently, even at that time the factum as regards any subsequent Will dated July 01, 1997 having been stolen was not mentioned.

(v) It is further submitted that the factum of execution, registration as well as the recovery of the present Will in the year 2007, based on the testimony of the attesting witness as well as the testimony of the respondent No.2 clearly creates a cloud of suspicion which establishes that the said Second Will dated July 01, 1997, is a forged and fabricated and hence the petitioner is not entitled to the relief as prayed for. It is further submitted that

late S. Ajit Singh Kalsi during his lifetime had handed over the original documents of both the properties to the appellant, and as such there was no reason for him to execute the alleged Will dated July 01, 1997 in favour of Anil Dip Singh Kalsi. According to him, the Court has only relied upon certain portions of the affidavit by way of evidence filed by Shiv Dev Singh, and has in fact not even considered the cross examination of the said witness as well as that of the respondent No.2.

(vi) According to him, even the judgments relied upon by this Court in arriving at the impugned order / judgment manifestly state that in the event of suspicious circumstances the onus is heavy and unless it is discharged satisfactorily, the Courts are reluctant to treat the document as the last Will of the testator. It further states that in order to prove the Will, it is the attesting witness who is to depose regarding the execution thereof in terms of Section 63 and 68 of the Indian Evidence Act. In the present case, the deposition of Shiv Dev Singh is in fact even contrary to the facts on record and as such totally demolishes the case of execution of the Will dated July 01, 1997. Further, the interpolation of entry made for registration of the Will in the office of Sub Registrar (Peshi register) is writ large on the face of

the record.

12. On the other hand, Mr. Sanjeev Sindhwani, learned Senior Counsel appearing for the respondent No.2 / S. Anil Dip Singh Kalsi, has submitted that the instant dispute is regarding the issue of devolution of the estate of Late Sardar Ajit Kalsi. According to him, the appellant and respondent No.3 are propounding the Will dated December 21, 1987 and the respondent No.2 is propounding the Will dated July 01, 1997. The learned Single Judge vide the impugned judgment dated November 15, 2017 has held that both Wills have been validly executed by the testator. But considering the fact that the Second Will was executed later in point of time (after a period of 10 years), this Will being the last and valid Will of the testator, probate was granted of the Second Will dated July 01, 1997. Both wills are registered Wills. He submitted, at the time of execution of the First Will, the appellant and respondent No.2 were residing in Delhi. Soon after the execution of the First Will, the appellant moved to the USA. Thus, it was only respondent No.2 who was residing in Delhi with his father. Therefore, it was only natural for the Testator to execute a Second Will, alter the line of succession, and bequeath the property at South Extn. II to

respondent No.2. This fact has also been appreciated by the learned Single Judge. It is also submitted, if respondent No.2 had to fabricate and forge a Will, the appellant and respondent No.2 would not be joint executors of the Will.

13. It is further submitted that to prove the valid execution and registration of the Second Will, respondent No.2 examined himself as RW 1, the attesting witness Mr. Shiv Dev Singh as RW-3 and the record keeper from the office of the Sub-Registrar V, New Delhi as RW-2 to prove the certified copy of the original as maintained by them in their record. During the cross examination of RW-1, no question / suggestion was put to the witness that the original Will was different from the certified copy called from the record of the Sub-Registrar V. This witness was not cross-examined on the aspect of registration and forgery, nor was he cross-examined regarding any fraudulent registration of the Will. The appellant at this belated stage is now attempting to argue and point out alleged lacunae in the registration of the Second Will without putting any questions to any of the witnesses regarding the issue that is now sought to be argued.

14. It is also submitted that RW-2, the record keeper from the office of the Sub-Registrar V was examined and he proved the

fact that the certified copy of the Second Will on the Court record was the same as the original which was pasted on the pages of the Register maintained by the Sub-Registrar V. Despite an opportunity being given, this witness was not cross examined at all on any aspect whatsoever. There was no cross examination on the aspect of forgery, fabrication, nor on the aspect of there being any irregularity or delay in registration. It is settled law that cross examination is a matter of substance and not of procedure. The effect of non cross examination is that the statement of the witness has not been disputed, and since the testimony has gone completely un rebutted, it must be accepted as fully established. It is also stated that in built in the factum of registration, is also the fact that the Will had in fact been executed.

15. It is also submitted that RW 3, Shiv Dev Singh was the attesting witness to the Second Will and he has duly proved the preparation, execution, as well as the registration of the Will. This witness was also not cross examined regarding the venue of registration, nor was he ever cross examined on the aspect of registration itself. It was suggested to this witness that the second attesting witness Sh. H.M. Nayyar had put his signatures on the Will as a scribe. This suggestion was denied. However, the

effect of this suggestion is that the appellant itself does not dispute that Sh. H.M. Nayyar had in fact signed the Will, the dispute only being that he had signed as a scribe and not as a witness. Therefore, in built in this argument is that the Will was in fact executed. Thus, having put no question to any of the witnesses regarding any aspect of registration, the contention of the appellant cannot be given any weightage at this stage of the appeal. The process of cross examination in a trial is integral and is not merely procedure. The effect of a testimony having gone unrebutted and unchallenged is that it must be taken to be correct. According to him, what is sought to be argued at this stage of the appeal, if at all it was the case of the appellant, the witnesses of respondent No.2 ought to have been cross examined on those aspects. Rather, the appellant had multiple occasions to cross examine the witnesses on any aspect it deemed fit. Neither of the three witnesses were cross examined at any point of time during the course of the trial qua the aspect of registration. The appellant had another opportunity before the learned Single Judge to lead further evidence, however, on the statement of the counsels for the parties, it was agreed that the evidence that had been lead in Probate Case No. 177/2007 renumbered as Test.

Case No. 40/2016 would be read as evidence in Test. Case No. 57/2009 pending before this Court. Thus, even in the second round, the appellant did not take the opportunity to lead any evidence or cross examine any witness. Therefore, the testimony of the witnesses qua registration must be accepted. It is also stated that as per Section 58 of the Registration Act, 1908, the registering officer shall endorse the signature of every person admitting the execution of the document. These details have been endorsed by the registrar and are visible at page 173 of the paper book. This act, done in an official capacity, carries with it a presumption in law under Section 114(e) of the Indian Evidence Act of the valid execution of the document. Though this presumption is rebuttable, however, the appellant has not been able to discharge this onus in the absence of any cross examination in this regard and in the absence of any evidence to the contrary. Thus, it has been rightly held by the learned Single Judge that the Second Will has been duly proved and is the last and valid Will of the testator. This Will being the Will executed later in point of time is the last valid Will of the testator and therefore the probate for the same has been rightly granted. In the end, he seeks the dismissal of the appeal. In support of his

contention, he relied on the following judgments:-

- (i) ***Rajinder Pershad v. Darshan Devi AIR 2001 SC 3207;***
- (ii) ***Nutan Kumar v. Rajesh Arora 2013 (134) DRJ 219;***
- (iii) ***Surender Rana v. State &Ors. 2017 (243) DLT 181;***
- (iv) ***Muddasani Venkata Narsaiah (D) Th. LRs v. MuddasaniSarojana 2016 AIR (SC) 2250.***

16. Having heard the learned counsel for the parties and perused the written arguments filed by them on behalf of the appellant and the respondent No. 2, the only, issue need to be decided is whether the conclusion of the learned Single Judge on the second Will dated July 01, 1997 is justified. The reasons which weighed with the learned Single Judge to grant probate of the Will dated July 1, 1997 registered on December 15, 1997 (Exhibit RW3/1) in favour of the Joint Executor Anil Deep Singh Kalsi and Jasdeep Singh Kalsi, are as under:-

15. Challenge of learned counsel for Jasdeep Singh Kalsi to the second Will is that it does not mention the first Will which was a duly registered Will and that it was attested by a stranger who was neither known to the deceased nor to the family. In this regard it would be appropriate to note the evidence of Shiv Dev Singh (RW-3) wherein he stated that he used to meet the deceased on every Sunday at Gurudwara, Bangla Sahib, New Delhi since 1995 till 2000. In his affidavit he further deposed:

“2. That some times in the month of June, 1997 Shri Ajit Singh Kalsi told the deponent that he wanted to execute a

Will and asked me to sign the Will as attesting witness. The deponent agreed to the said request of the said Shri Ajit Singh Kalsi.

3. That on 30.06.1997, Shri Ajit Singh Kalsi requested me to accompany him to the office of Sub-Registrar, Mehrauli, Delhi for the execution and registration of his Will. On 01.07.1997, I along with Shri Ajit Singh Kalsi went to the office of SubRegistrar, Mehrauli, Delhi where I introduced Shri Ajit Singh Kalsi with Shri H.M. Nayyar, Advocate to whom Shri Ajit Singh Kalsi asked to make his Will. Shri H.M. Nayyar noted down the details provided by Shri Ajit Singh Kalsi for the execution and registration of his Will and thereafter Shri H.M. Nayyar, Advocate got the Will typed from the typist who was sitting next to his seat at the office of Sub-Registrar, Mehrauli, Delhi.

4. That after the Will was typed, the same was read over and explained to Shri Ajit Singh Kalsi by Shri H.M. Nayyar, Advocate in my presence. Shri Ajit Singh Kalsi also read over the contents of the said Will. After reading the Will Shri Ajit Singh kalsi signed the said Will at point "A" in my presence and in the presence of Shri H.M. Nayyar and thereafter I signed the said Will in their presence and lastly Mr. H.M. Nayyar signed the said Will in our presence and also affixed his photograph on the said Will.

5. That the deponent is one of the attesting witness to the Will dated 01.07.1997 executed by Ajit Singh Kalsi, S/o Late Shri S.S. Kalsi. (At this stage the copy of the Will summoned from the office of Sub-Registrar is shown to the deponent). The deponent identify the signature of Shri Ajit Singh Kalsi at point "A" on the last page of the said Will. The deponent also identify his signature at point "B". The deponent also identify the signature of Shri H.M. Nayyar, Advocate at point "C". The certified copy of the Will is Ex.RW-4/2."

16. Despite repeated questions Shiv Dev Singh (RW-3) clarified that he did not know Anil Deep Singh Kalsi or Anita Kalsi and he came to know them only when they

visited his house and informed that Ajit Singh Kalsi had died. He clarified in cross-examination that the Will was first signed by the deceased, thereafter by H.M. Nayar, Advocate who affixed his seal also and thereafter he signed the Will. He denied the suggestion that the deceased was never a visitor to Bangla Sahib, Gurudwara or that he was visiting Gurudwara Masjid Moth only. From the cross-examination of Shiv Dev Singh nothing has been elicited to challenge the validity of the second Will.

17. Further initially with the petition Anil Deep Singh Kalsi only filed the photocopy of the Will which was available to him, however the certified copy of the same was also placed on record and Radhey Shyam Sharma, Record Keeper of the Office of Sub-Registrar – V, Mehrauli was brought in the witness box as RW-2. He deposed that the certified copy of the Will which was on the Court record was the copy of the Will brought by him which is on record of the Registrar. This witness has not been cross- examined on behalf of Jasdeep Singh Kalsi. No question has been put as to why the Will which was executed and submitted for registration on the 1st July, 1997 was registered on 15th December, 1997 vide registration No. 8914, Book No. II, Volume No. 752 on page 131 – 133 dated 15th December, 1997. The witness having not been cross-examined, his testimony having gone unchallenged, learned counsel for Jasdeep Singh Kalsi cannot now place onus on Anil Deep Singh for the delayed registration of the Will. Be that as it may it is settled law that the registration dates back to the date of execution”.

17. From the above, it is clear that the learned Single Judge has come to a finding of fact that from the cross examination of Shiv Dev Singh, nothing has been elucidated to challenge the validity of the second Will. Learned Single Judge also held that

RW-2 Radhey Shyam Sharma, Record Keeper of the office of the Sub-Registrar-V, Mehrauli, has not been cross examined by Jasdeep Singh Kalsi. No question was put as to why Will which was executed and submitted on July 1, 1997 was registered on December 15, 1997. The conclusion of the learned Single Judge was that, the witness having not been cross examined, his testimony with regard to the certified copy of the Will, which was on the Court record was the copy of the Will brought by him from the Sub-Registrar Office, which stood proved and also Jasdeep Singh Kalsi cannot place onus on Anil Deep Singh Kalsi for the delay in registration of the Will.

18. Having noted the reasons of the learned Single Judge for granting probate of the Will dated July 1, 1997, we proceed to examine the submissions made by Mr. Kapur. The submissions made by Mr. Raman Kapur, reveal an attempt to discredit the witnesses RW-1 to RW-3.

19. The deposition of Shiv Dev Singh (RW-3) during cross examination is reproduced as under:

“PC-177/07

*RW3 Sh. Shiv Dev Singh –
On SA*

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xxxxx

XXXXXX by Sh. Girish Malhotra, counsel for the petitioners.

I was in a private job. Now, I am living a retired life. I was working with M/s Anant Raj Agencies. I know Sh. Pankaj Nakra.

Deferred.

PW3 Sh. Shiv Dev Singh – recalled for cross-examination.

On SA

XXXXXXXXX By Sh. Girish Malhotra, counsel for the petitioners.

I joined Anantraj Agencies about 32 years back and retired about 1 ½ years before. I do not know Anita Kalsi.

Q. I came to know about Anita Kalsi, when she alongwith her husband had visited my house at Fateh Nagar about 4/5 years before.

I cannot say, as to whether Anita Kalsi used to visit the office of Anantraj Agencies at Connaught Place and used to meet Mr. Pankaj Nakra. I knew Ajit Singh Kalsi since the year 1995, as he was a regular visitor to Banla Sahab Gurudwara and I used to equally visit there and do Sewa together. I was not introduced to him by anyone. Vol. It was incidentally that during the course of Sewa at Bangla Sahab Gurudwara, we met each other. In the year 1995, Ajit Singh Kalsi, in my estimation, was aged about 70-72 years. Ajit Singh Kalsi never visited my residence. I also never visited the residence of Ajit Singh Kalsi. I do not know, as to how many children Ajit Singh Kalsi was blessed with. It was only a few days before the execution of the Will by him, that I came to know about his place of residence, which is P-83, South Extn., Delhi. I do not remember, as to whether it was south Extn. Part-II. It is incorrect to suggest that Ajit Singh Kalsi

was never a visitor to Bangla Sahab Gurudwara as deposed to by me or otherwise or that, he was visiting only the Gurudwara at Masjit Moth, which is closed to South Extn., Part-II. But for Ajit Singh Kalsi I did not know any of his family members till the time of execution of the Will Ex.RW-3/1. I do not know as to what was the profession of Ajit Singh Kalsi. Vol. There was never been any reference in this context. I have studied up to 9th standard. I can read English language only a little bit. But I put my signatures in English. I cannot write English language. I knew Shri H.M. Nayar Advocate as for the field work of my company – Anant Raj Agencies, I used to Visit Tehsil, Mehrauli and Shri H.M. Nayyar Advocate was having his seat there. I am not able to recall any specific work of Anant Raj Agencies in relation to which I met Shri H.M. Nayyar Advocate at Tehsil, Mehrauli. Shri Nayyar does not have any Chamber or room at Tehsil Mehrauli. Vol. He operated from a table and chair put in the compound of Tehsil Mehrauli. I it incorrect to suggest that I am not able to mention any instance of work of Anant Raj Agency in relation whereto, I ever met H.M. Nayyar Advocate, as Anant Raj Agency never had any work for H.M. Nayyar, Advocate. It is also incorrect to suggest that I never met H.M. Nayyar Advocate and do not know him at all. It was after about one and half year of 1995 when I met Ajit Singh Kalsi at Bangla Sahib Gurudwara that he mentioned about his wish to execute the Will. I visited Tehsil Mehrauli on 1.7.1997 on my Scooter all alone by myself. Sardar Ajit Singh Kalsi was already present there when I reached. I reached Tehsil Mehrauli on that day at about 10/10.15 a.m. I took Ajit Singh Kalsi to Shri Nayyar Advocate there and it was Shri Nayyar, Adv. who typed the Will by himself. Shri Nayyar after typing the Will told us that he Will could not be registered at Tehsil Mehrauli and that, the will could be registered at INA. Will was then registered at INA on the same day, i.e., 1.7.1997. Ajit Singh Kalsi

had carried his photograph by himself and his photograph was not taken either at Tehsil Mehrauli or INA. After typing, the Will was first read by Shri Nayyar, Adv. and thereafter by Shri Ajit Singh Kalsi. Shri Ajit Singh Kalsi has told me that he had one son and his wife and he wished to bequeath his Kothi to them. Shri Nayyar, Adv. had read over the contents of the Will to Ajit Singh Kalsi in my presence. Shri Ajit Singh Kalsi did not bequeath any part of his estate to any of his sons in the said Will.

I do not when did Ajit Singh Kalsi died. Vol. I came to know of his death only when his son and his wife Anita Kalsi visited my house. I did not attend Bhog ceremony of Ajit Singh Kalsi, which took place at Gurudwara at Masjid Moth. I was not informed of either the death or bhog ceremony of Ajit Singh Kalsi by anyone. It was only when Anita Kalsi along with her husband visited my house that they informed me that Ajit Singh Kalsi had died. Will was first signed by Ajit Singh Kalsi and thereafter the Advocate Nayyar had affixed his seal and thereafter I had signed the Will. It is incorrect to suggest that Ajit Singh Kalsi never signed and executed the Will Ex.RW-3/1 in my presence and that, I have put my signatures appearing on the Will at point B in collusion with Anita Kalsi and her husband and on the instructions of Shri Pankaj Nakara. After 1.7.1997, I have never visited any office of any Sub-Registrar. I can identify the signatures of Ajit Singh Kalsi, if shown to me. Signatures appearing at point A on Ex.RW-1/P-1 are that of Ajit Singh Kalsi. Ajit Singh Kalsi had put his thumb impression on the Will in the office of Sub-Registrar. I do not remember, if the thumb impressions were put on all the pages of Will”.

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PC-177/07

PW3 Sh. Shiv Dev Singh – recalled for cross-examination.

On SA

XXXXX by Sh. Girish Malhotra, counsel for the petitioners.

I do not know, as to whether Sh. Ajit Singh Kalsi had brought any document of his ownership with respect to P-83, South Extn.-II at the time of execution of Will. Sh. Ajit Singh Kalsi did not show any document of his ownership to Mr. H.M. Nayyar, Adv. before the typing of the Will. It took about 1 hour to 1¼ hour to draft the Will by Mr. Nayyar, Adv. It is correct that Mr. Ajit Singh Kalsi had read the said Will himself and it was also read over by Sh. Nayyar, Adv. in my presence. Mr. Nayyar told Mr. Ajit Singh Kalsi that the said Will will be registered at INA and not at Tehsil, Mehrauli. It was about 12.15/12.30 p.m. that we came to know that the said Will cannot be registered at Mehrauli and we have to go to INA for the registration of the said Will. I went to INA all by myself on my two wheeler scooter and Sh. Ajit Singh Kalsi reached INA himself but I do not know, whether he came by auto or by car. It was about 1 p.m. that myself and Sh. Ajit Singh Kalsi reached the office of Sub-Registrar, INA, Delhi. After reaching INA, Sh. Ajit Singh Kalsi got a receipt for the registration of the Will. A help was taken by Sh. Ajit Singh Kalsi from a person standing there. It is incorrect that besides me and Sh. Ajit Singh Kalsi, none other was present on behalf of Sh. Ajit Singh Kalsi for the registration of the said Will. It is incorrect that Sh. Anil Deep

Singh and his wife came to my house about 4-5 years ago and they had shown me the original Will executed by Sh. Ajit Singh Kalsi. I am not a summoned witness. It is incorrect that I have come to depose at the behest of Sh. Anil Deep Singh and his wife. I was brought to the house of Sh. Sanjeev Sharma, Adv. by Sh. Anil Deep Singh, who told me what evidence has to be given with respect to the registration and execution of the Will of Sh. Ajit Singh Kalsi. It is incorrect to suggest that Sh. Ajit Singh Kalsi had not signed the said Will in our presence. It is further incorrect to suggest that I had not signed the said Will in the presence of Sh. Ajit Singh Kalsi or the other witness. It is also incorrect to suggest that Sh. H.M. Nayyar did not sign the Will as an attesting witness and he had only signed as the scribe of the said Will. It is incorrect to suggest that I have filed a false affidavit and deposing falsely”.

20. Similarly, Radhey Shyam Sharma, in his examination, has stated as under:

“PC-177/07

RW-2 Radhey Shyam Sharma s/o Shri Dauji, UDC/Record Keeper, Office of Sub-Registrar-V, Mehrauli, New Delhi

On SA

I have brought the summoned record. I have seen the certified copy of the Will dated 01.09.1997 registered on 15.12.1997 vide registration NO.8914, Book No.3, Volume NO. 752 on Page 131-133 dated 15.12.1997. The certified copy of the Will which is on the court record is the copy of Will brought by me, which is our record”.

21. The deposition of Anil Deep Singh Kalsi (RW1), as filed on record, reveals the following:-

*“PC-177/07
RW-1 Sh. Anil Deep Singh Kalsi –
On SA*

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xxxxxx

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*XXXXXX by Shri Girish Malhotra, Advocate for
petitioner*

I am Metric Pass. I can read and write English but I cannot understand English very well. My wife looked after the construction of second floor. My wife is having some documents to show that construction of second floor was raised by me and the amount incurred by me. I signed on my affidavit Ex.R-1 after reading and understanding contents of the same.

An agreement was executed between my father and me regarding raising of construction on second floor. I can identify signatures of my father. (At this stage, ld. Counsel for petitioner has shown an agreement to the witness). The agreement bears signatures of my father at point A and my signatures are at point B and the agreement is Ex.RW1/P-1.

It is correct that my father executed will dated 21.12.87. It is correct that Will Ex.PW1/A bears signatures of my father at point A.

It is also correct that my father Sh.Ajit Singh Kalsi went missing since 18.05.2000. I lodged a missing report at Police Station Defence Colony but I do not remember the date. Later on petitioner Jasdeep Singh Kalsi lodged a missing report at Police Station Defence Colony. It is wrong to suggest that I had not lodged any missing report. I am not doing any job for the last about two years. I was married in the year 1976. At the time of my marriage I was running a shop. In the year 1997 I was running a

shop of watch repairing. I was not assessed to income tax in the year 1997 as my income was not taxable.

It is wrong to suggest that neither my wife nor me were looking after our parents since we did not had substantial income. It is correct that in July, 2000 petitioner No.1 had filed a suit for injunction against me, my wife and my other brothers. It is also correct that I and my wife received the summons of said suit at the address of P-83, Second Floor, South Extension Part II, New Delhi. It is also correct that on 14.07.2000, a compromise was recorded in the said suit and all the parties signed on the same. It is wrong to suggest that I was in possession of only second floor on 14.07.2000. I do not remember if I had file reply in the said suit for injunction. I also do not remember if I stated in my statement in the said case that I was in occupation of entire property no. P-83, South Extension. I have cordial relations with my wife. It is correct that my wife filed a criminal complaint against my brothers in Patiala House Courts. It is wrong to suggest that I and my wife were not looking after my father Sh. Ajit Singh Kalsi. Sh. Har Narayan was a tenant on the first floor of house no. 83, South Extension and he died in the year 2004. It is wrong to suggest that Sh. Jasdeep Singh Kalsi was in possession of ground floor of house no. 83, South Extension till September, 2008. I am in occupation of ground floor and first floor of house no. 83, South Extension since 1962. It is wrong to suggest that in 1986, I was in occupation of only one room on the ground floor alongwith my father. It is correct that after raising construction of second floor in August, 1987 I shifted to the second floor. It is wrong to suggest that I was never in possession of ground floor and first floor. It is also wrong to suggest that I forcibly occupied ground floor and first floor in September, 2008. It is correct a suit for possession in respect of ground floor and first floor is pending against me. I know Sh. Vibhu Kapur.

(At this stage, Ld. Counsel for petitioner submits that further cross examination be deferred as he wants to produce the certified copy of statement recorded in suit for injunction and certified copy of criminal complaint). Further cross examination is deferred.

RW-1 Sh. Anil Deep Singh Kalsi – recalled for further cross-examination.

On SA

xxxxxxx by Sh. Girish Malhotra, counsel for the petitioners.

I found the photocopy of the Will dated 01.07.1997 from the old papers of my father. I do not know about the original Will dated 1.7.1997. My father used to reside on the ground floor of the property bearing No.P-83/South Extn. Part-II. On the first floor, there was a tenant by the name of Har Narayan. Said tenant died in 2006 (approx.). I do not remember, as to whether I had given the statement before the Civil Court in a suit for injunction that I am in possession of the entire property. I have read my statement before signing it. Said statement is already Ex.PW2/1 (colly) and my signatures appears at pt. A. It is incorrect to suggest that the Will mark PW2/R1 is a forged one and it does not bear the signatures of my father. I do not know Sh. H.M. Nayyar, Advocate. I know Sh. Shivdev Singh only after I got the photocopy of the Will of my father. I do not remember date and month but I found the copy of the Will in the year 2007. It is correct that I never knew about the Will dated 1.7.1997 prior to the year 2007. My brother Sh. Jasdeep Singh Kalsi came to India only once and he stayed on the second floor of the property with me. I do not remember as to whether I told this fact to my Advocate, while drafting the written statement in the suit for possession filed by the petitioner No.1

herein. It is incorrect to suggest that I have made any wrong statement in the abovesaid context. I do not remember as to whether the petitioners used to reside on the ground floor of the property prior to filing of the suit for possession by the petitioner No.1 against me and other legal heirs of late Sh. Ajit Singh Kalsi. It is incorrect to suggest that I have deposed falsely.

I do not remember my date of marriage. I have got three children two sons and one daughter. I do not remember their date of birth. Vol. I have suffered brain stroke about a year back. I have not brought any medical record of my brain stroke. It is incorrect to suggest that I have manipulated the story of brain stroke ”.

22. From the deposition of all the three witnesses being RW-1, RW-2 and RW-3, it is clear that during the cross examination of RW-1, no question/suggestion was put to the said witness that the original Will was different from the certified copy called from the record of the office of the Sub-Registrar-V. There was no cross examination of RW-2 Radhey Shyam Sharma on the aspect of registration and forgery nor he was cross examined regarding alleged fraudulent registration of the Will. The said witness RW-2 was not cross examined with regard to the venue of registration nor was he cross examined on the aspect of registration. This we say so, as during the course of the arguments, Mr. Kapur sought to rely upon a document which was never produced nor exhibited

before the Court concerned. We agree with the submission of Mr. Sindhwani that as no question was put to any witness regarding execution of the Will or with regard to any aspect of registration, the submission made by Mr. Kapur, cannot be given any weightage at this stage. In other words, the testimony of the witnesses having gone unrebutted and unchallenged and the aspect of execution of Will and its registration proved it must be taken to be correct. In fact, the appellant, did not avail any opportunity before the learned Single Judge to lead further evidence. It was only on the statement of the counsel for the parties, who agreed that the evidence that has been led in Probate Case No. 177/2007 (re-numbered as Testamentary Case No. 40/2016) would be read as evidence in Testamentary Case No. 57/2009.

23. Mr. Sindhwani is justified in relying upon the judgment of the Supreme Court in ***Rajinder Pershad Vs. Darshana Devi*** (*supra*), wherein, it was held as under:

“4. The only point urged albeit strenuously on behalf of the appellant, by Mr. P S. Mishra, the learned senior counsel, is that as there has been no valid service of notice so all proceedings taken on the assumption of service of notice are illegal and void. He has invited our attention to the judgment

of the learned Rent Control Tribunal wherein it is recorded that Exhibit AW1/6 dated 5.8.86 was sent by registered post: and the same taken by the postman to the address of the tenant on 6.8.86, 8.8.86, 19.8.86 and 20.8.86 but on those days the tenant was not available; on 21.8.86 he met the tenant who refused to receive the notice. This finding remained undisturbed by both the Tribunal as well as the High Court. Learned counsel attacks this finding on the ground that the postman was on leave on those days and submits that the records called for from the post office to prove that fact, were reported as not available. On those facts submits the learned counsel, it follows that there was no refusal by the tenant and no service of notice. We are afraid we cannot accept these contentions of the learned counsel. In the Court of the Rent Controller, the postman was examined as A.W.2. We have gone through his cross-examination. It was not suggested to him that he was not on duty during the period in question and the endorsement "refused" on the envelope was incorrect. In the absence of cross-examination of the postman on this crucial aspect his statement in the chief-examination has been rightly relied upon. There is an age old rule that if you dispute the correctness of the statement of a witness you must give him opportunity to explain his statement by drawing his attention to that part of it which is objected to as untrue, otherwise you can not impeach his credit. In State of U.P. v. Nahar Singh (dead) and Ors., [1998] 3 SCC 561, a Bench of this Court (to which I was a party) stated the principle that Section 138 of the Evidence Act confers a valuable right to cross-examination a witness tendered in evidence by opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by permitting a witness to be questioned, inter alia, to test his veracity. It was observed. (emphasis supplied by this Court)

"The oft-quoted observation of Lord Herschell, L.C. in Browne v. Dunn clearly elucidates the principle underlying those provisions. It reads thus:

"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses."
(emphasis supplied by this Court)

24. Mr.Sindhvani has also relied upon the judgment in the case of **Nutan Kumar (supra)**, wherein, in para 9, the Court has held as under:-

"The testimony of PW-4 has to be tested on this touch stone. PW-4 in clear and categorical terms has admitted his signatures on Ex.PW-4/3. PW-4 was working as a Clerk with the document writer at Kashmere Gate at the relevant time; he has admitted that he used to sign as a witness on documents 2-3 times in a month; there was a heavy

rush hour in the office of the Sub-Registrar till 2-3 P.M and as such he could not notice as to at which place the second witness had signed near the stamp. He has also admitted the factum of the testator having signed the document as also the second witness Mr. R.R. Bhardwaj having attested FAO (OS) 284/2009 Page 5 of 12 it over the stamp affixed of R.R. Bhardwaj. This deposition clearly establishes that PW-4 had signed Ex. PW-4/3 knowing fully well that he was signing in his capacity as an attesting witness; he had in fact signed Ex.PW-4/3 after the testator had affixed his signatures on it; the second witness was also known to him by name and reference to R.R.Bhardwaj has been noted; PW-4 having admitted that R. R. Bhardwaj had signed over the stamp affixed of his name. It is also not in dispute that the testator was present for the registration of the document which is clear from the back page of Ex.PW-4/3 where the names of other two witnesses Yashpal Singh and R.R. Bhardwaj have also been noted. In fact no suggestion has been given to PW-4 on this count that the testator was not present at that time". (emphasis supplied by this Court)

25. We find that there is no cross examination of the witnesses in the manner noted by this Court in the aforesaid judgments, which surely, would suggest that the Will dated December 01, 1997 has been validly executed.

26. Having considered the facts on the record and the judgment of the learned Single Judge, we are of the view that the final conclusion arrived at by the learned Single Judge is justified and the appeals do not require any interference. They are

accordingly dismissed.

CM Nos. 3021/2018 and 3261/2018

In view of the order passed in the appeals, the miscellaneous applications are dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

DECEMBER 18, 2018/aky

