

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on : 21st November, 2022*
Judgment Delivered on : 21st December, 2022

+ **TEST.CAS. 79/2015 & I.A. 11413/2021**

DHARAM VIR Petitioner
Through: Mr. C. Mohan Rao, Sr. Advocate with
Mr.Alok Singh, Advocate with
Petitioner in person.
versus

STATE (GOVT. OF NCT DELHI) Respondent
Through: Mr. P.S. Patwalia, Sr. Advocate with
Mr.N.K.Kukreja and Ms.Harshika
Verma, Advocates for Objectors.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present petition has been filed by the Petitioner under Sections 276 & 278 of Indian Succession Act, 1925 for grant of probate of the Will dated 28th December, 2013 executed by Late Sh. Manmohan Singh Kohli (hereinafter referred as 'Testator').
2. It has been stated in the petition that the Testator did not have any legal heirs and therefore, the Government of NCT of Delhi was the sole respondent in the present petition. Notice in the petition was issued on 29th February, 2016. After the publication of the citations, the counsels for the Objectors namely Jatinder Singh and Jyoti Singh appeared before Court on

19th October, 2017 and 10th October, 2017 respectively.

3. The counsels for the Objectors failed to file/refile objections despite repeated opportunities being given to them. In view thereof, the right of the Objectors to file objections was closed vide order dated 14th May, 2018 passed by the Joint Registrar. Appeals filed on behalf of the Objectors challenging the closing of their right to file objections were dismissed by the Coordinate Bench as well as the Division Bench of this Court.

4. Case set up by the Petitioner in the present petition is as under:

4.1 The Petitioner was living with the Testator at the subject property bearing No. 75, Hemkunt Colony, New Delhi-110048 (subject property). The Testator treated the Petitioner as his own son as he did not have any legal heirs.

4.2 The Testator executed an unregistered Will dated 28th December, 2013 bequeathing subject property, and all the funds in the Bank Account bearing No.09324500123 with State Bank of Patiala, Mall Road Branch, Patiala along with the Locker bearing No. 265/15 in the said Bank, in favour of the Petitioner. The aforesaid Will was witnessed by two attesting witnesses namely Sh. Naresh Kohli and Sh. Sanjay Dutt.

4.3 The Testator passed away on 11th February, 2014.

4.4 The Testator was of sound state of mind at the time of execution of the aforesaid Will and the same was executed by him voluntarily and without any influence.

5. Accordingly, the present petition has been filed seeking probate of the Will dated 28th December, 2013 executed by the Testator in respect of his estate.

6. Five witnesses, namely the petitioner himself (PW-1), Sh. Naresh

Kohli (PW-2), Sh. Badal Kumar (PW-3), Mr. Ram Mohan Shukla (PW-4) and Sanjay Dutt (PW-5) were examined on behalf of the Petitioner. The aforesaid witnesses were also cross-examined by the counsels for the Objectors.

7. It has been vehemently submitted on behalf of the Petitioner that since no objections have been filed on behalf of the Objectors, they had no right to cross-examine the Petitioner. This objection was duly noted by the Joint Registrar in his order dated 25th November, 2019. On behalf of the Objectors, it was submitted that even though their right to file objections had been closed, the Objectors still had the right to cross-examine the Petitioner and his witnesses. It was also noted that the Objectors had already cross-examined four witnesses of the Petitioner and had also partially cross-examined the Petitioner.

8. When the matter came up before the court on 23rd December, 2019, the submission of the counsel for the Petitioner was noted that he does not press his objection that the Objectors have no right to cross-examine the Petitioner and his witnesses. Noting the aforesaid, the matter was placed before the Joint Registrar for continuing the cross-examination.

9. In view of the above, having given up his objections with regard to the right of the Objectors to cross-examine the witnesses of the Petitioner, the Petitioner cannot reagitate the said issue again. Therefore, there is no merit in the submission of the Petitioner that cross-examination should be disregarded.

10. Senior counsel appearing on behalf of the Objectors has highlighted various suspicious circumstances regarding the subject Will. On the other hand, the senior counsel for the Petitioner submits that there were no

suspicious circumstances surrounding the said Will. Counsels for the parties have also handed over written notes in support of their submissions.

11. Final arguments in the present petition were heard on 21st July, 2022, 23rd September, 2022, 2nd November, 2022 and 21st November, 2022.

12. I have heard the rival submissions and also gone through the record of the petition.

13. At the outset, it is deemed appropriate to set out Sections 59 and 61 of the Succession Act, 1925:

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

61. Will obtained by fraud, coercion or importunity.—A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the Testator, is void.”

14. In *H. Venkatachala Iyengar v. B.N. Thimmajamma* AIR 1959 SCC 453, the Supreme Court elucidated few fundamental guiding principles with regard to adjudication of a Will when propounded before a Court of law.

“19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the Testator, and so, when it is propounded or produced before a court, the Testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed Testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the Testator, that the Testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the

dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the Testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the Testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the Testator may not remove the doubt created by the appearance of the signature; the condition of the Testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the Testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the Testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the Testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the Testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the Testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

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22. *It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence.....”*

15. The aforesaid principles were reiterated recently by the Supreme Court in ***Kavita Kanwar v. Pamela Mehta & Others***, (2021) 11 SCC 209.

16. Applying the principles laid down in the aforesaid judgments to the facts and circumstances of the present case, in my view, various suspicious circumstances emerge with regard to the execution of the subject Will, which are set out below.

I. Opening of the joint bank account

i. A bank account was opened in the joint names of the Petitioner and the Testator with Kotak Mahindra Bank on 21st November, 2013. In the ‘Account Opening Form’ (Ex.PW-4/1), the Testator has wrongly been described as ‘Manager, Numero Uno’, whereas the Testator was a doctor by profession. It is pertinent to note that the Petitioner is shown to be the proprietor of a retail store, namely ‘Numero Uno’ in the designation column of the ‘Account Opening Form’.

ii. Counsel for the petitioner does not deny that the email address given on the said form, i.e., dVbhau@yahoo.com, is that of the Petitioner. However, he submits that the mobile number (9582279560) mentioned therein was that of the Testator. It is relevant to note that the same mobile

number has been given in the 'Customer Profile Sheet' of the Petitioner as well. If the said mobile number belonged to the Testator, there was no reason for the Petitioner to give it as his mobile number.

iii.. The aforesaid account was opened barely two and a half months before the death of the Testator on 11th February, 2014. The Testator already had an account with Punjab and Sindh Bank, Delhi and there was no reason for him to open a joint bank account with the Petitioner.

iv. Further, the 'bank mandate' has been given by the Testator in favour of the Petitioner to manage the aforesaid Bank Account. It has been submitted on behalf of the Petitioner that this was done out of 'love and affection' that the Testator had towards the Petitioner.

v. The Voter ID Card of the Testator was issued only on 6th November, 2013. The surname of the Testator in the said Voter Id Card has wrongly been spelt as "KOLHI", whereas the correct surname of the Testator was "KOHLI".

vi. The Aadhar Card of the Testator was applied on 4th November, 2013. No phone number or email ID of the Testator were given while applying for the Aadhar Card. The Testator had applied for a new Pan Card on 25th November, 2013.

vii. It appears that the Voter ID Card, Aadhar Card and Pan Card were applied in the very same month, i.e., November, 2013 only for the purposes of opening the joint bank account.

17. All the aforesaid circumstances create a suspicion in the mind of the Court that the joint bank account was opened under the influence and control of the Petitioner with a specific purpose in mind.

II. Power of Attorney executed by the Testator in favour of the Petitioner

- i. Two stamp papers of Rs.100 were purchased by the Petitioner on 9th December, 2013, one for 'Power of Attorney (GPA)' (Ex. PW1/3) and the second for 'Lease upto 5 years' (Ex. PW1/DX10).
- ii. The GPA was executed by the Testator in favour of the Petitioner. However, the details of the bank account of the Testator in State Bank of Patiala, Mall Road Branch, Patiala have been kept blank in the said GPA. This creates a doubt that the GPA was not made by the Testator but by someone, who did not have detailed information of the Bank Account of the Testator in Patiala. No date is mentioned in the last paragraph of the GPA, only the year 2013 is mentioned,
- iii. In the stamp paper purchased for the GPA, the Testator seems to have signed his name with a surname "KOHILI". Further, on the first and the second page of the GPA, the Testator appears to have signed his name as "KOLHI" rather than KOHLI. The different spellings used in the signatures once again raises a doubt whether the signatures were those of the Testator or not.

18. It does create a suspicion as to why would the Testator give a GPA in favour of the Petitioner to operate his bank account. It appears that the Testator was completely under the control of the Petitioner and the Petitioner exerted undue influence on the Testator.

III. Rent Agreement

- i. The Rent Agreement (Ex. PW1/DX10) was executed by the Testator on the same date as that of the GPA.

- ii. Even though the date mentioned on the Rent Agreement is 9th December, 2013, the lease for a period of 5 years was to commence from 15th January, 2014, i.e., only a few days before the death of the Testator.
- iii. The said Rent Agreement was notarised only on 8th February, 2014, i.e., only three days before the Testator's death.
- iv. The Petitioner's address in the Rent Agreement is shown in East of Kailash, whereas in the Bank opening form and the present petition, his address is that of Madan Gir, New Delhi.
- v. The Advocate, one Mr. Akash, whose signature appears as a witness on the Rent Agreement, has informed the police that he never signed as a witness on any such document. Reference in this regard is made to the action taken report dated 21st May, 2014 (Mark-A) filed by the Police Station, Greater Kailash before the Court of Metropolitan Magistrate, Saket Courts, New Delhi.
- vi. In the present petition, the Petitioner nowhere states that he was a tenant of the Testator, nor has the Rent Agreement been disclosed. The only averment made is that he used to serve and look after the Testator. The counsel for the Petitioner submits that though the aforesaid fact was disclosed to the Advocate, inadvertently, the same was missed out from the petition and was therefore, not disclosed in the petition. It is hard to accept this submission, as this was a material omission and has an important bearing on the petition. In both the petition and the Will, the case of the Petitioner is based on the fact that the Petitioner was living with the Testator and looking after him, which is in stark contrast to the Petitioner being a tenant of the Testator. If the Petitioner was genuinely a caregiver and was looking after the Testator, what was the need to execute a Rent Agreement

in favour of the petitioner.

19. It appears that the Rent Agreement was created by the Petitioner with the oblique motive of retaining possession of the subject property and was therefore, not disclosed in the petition.

IV. Evidence of the attesting witnesses

i. In the affidavit filed on behalf of Sh. Naresh Kohli (PW-2), one of the attesting witnesses to the Will (Ex. PW1/4), it has been stated that PW-2 accompanied the Testator to the chamber of his counsel in Tis Hazari Courts Complex, where PW-2 noticed that the Testator had already got a Will prepared and the Testator read the contents of the Will and found it to be correct and thereafter, the Testator signed it in the presence of PW-2.

ii. The second attesting witness to the Will was one Sh. Sanjay Dutt (PW-5), the Court clerk of Mr. I.D. Tyagi, Advocate, who had prepared the Will. In his cross-examination conducted on 21st February, 2019, he stated that it took around one and half hours for preparing the Will and the same was typed after the Testator reached the office of the Advocate. This is in stark contrast to the evidence of Sh. Naresh Kohli (PW-2), where PW-2 has categorically stated that the Will was ready when PW-2 along with the Testator arrived at the chamber of Mr. I.D. Tyagi, Advocate. Clearly, this raises a doubt in the mind of the Court with regard to the credibility of the attesting witnesses.

iii. Senior Counsel for the Petitioner has submitted that there is no contradiction in the testimony of the two attesting witnesses as both the witnesses have deposed that the draft of the Will was ready and only some corrections were required to be done, which took around one and half hours.

I am afraid, I do not read the testimony of the two attesting witnesses in this manner. There is a clear contradiction in the testimonies of the two attesting witnesses. As per PW-2, the Will was ready when the Testator reached the Chamber, whereas as per PW-5, the Will was typed after the Testator reached the Chamber.

iv. The Will was executed in the Tis Hazari Courts Complex and the same was not notarised. In response to a question in cross-examination with respect to the Will being notarised, PW-5 gave the following answer:

“I along with Sh. Manmohan Singh and Sh. Naresh Kohli went for getting the Will notarised but could not find the notary public as the courts were closed for winter vacation. At the time, it was evening and due to that reason I could not find any other notary public”.

v. I find it very hard to believe that no notary was available in the Tis Hazari Courts Complex, which are the largest district Courts in Delhi, on a given day.

vi. As per the Petitioner, he obtained a copy of the Will from Sh. Naresh Kohli in the year 2015, whereas as per the testimony of Sh. Naresh Kohli, the Will was given by him to the Petitioner only a few months after the death of the Testator. The Testator died on 11th February, 2014. Once again, this is a clear contradiction.

V. Other Suspicious Circumstances

i. In the index of the documents filed on behalf of the Petitioner on 20th July, 2005, the document filed at page 10 is described as the photocopy of the Rent Agreement executed between the Testator and the Petitioner. However, what has been filed is a perpetual Lease Deed dated 4th February, 1971 (Ex. PW3/3) in respect of the subject property in favour of Tarlochan

Singh Kohli, the father of the Testator. The first page of this document is a stamp paper dated 10th September, 2013 purchased by the Petitioner. The lower half of the stamp paper has no relation to the upper half of the stamp paper. It baffles the court as to why the petitioner would apply for a copy of the aforesaid perpetual Lease Deed.

ii. From the letter dated 3rd January, 2014 (Ex.PW3/2) issued by the Delhi Development Authority (DDA) to the Testator allowing mutation of the half undivided share of the Testator's mother in favour of the Testator, it appears that the Testator had made this request only on 13th December, 2013. The mother of the Testator had expired as far back as on 10th May, 1996. This raises a suspicion in the mind of the Court as to why would the Petitioner apply for the said mutation 17 years after the death of his mother.

iii. The Petitioner in the application filed under Section 156(3) of the Code of Criminal Procedure, 1973 (CrPC) along with the complaint being CC No.106/1/A/14 before the CMM, Saket Courts (Ex. PW1/DX8), had himself stated that the Testator suffered from depression, whereas in the present petition, the Petitioner has stated that the Testator was of sound mind.

iv. In the complaint made to the Greater Kailash-I Police Station (Ex. PW1/DX11), the Petitioner had stated that there were some close relatives of the Testator, whereas the stand taken in the present petition is that the Testator did not have any relatives and therefore, no relatives were made parties to the present petition.

20. It is noteworthy that various documents, details of which are given below, were executed in relation to the estate of the Testator involving the Petitioner within a short span of two months, i.e., from November, 2013 to

December, 2013:

- i. The Voter ID, Aadhar Card and a new Pan Card of the Testator were applied in November, 2013.
- ii. The Joint bank account of the Petitioner and the Testator was opened in November, 2013 on the basis of the aforesaid documents and the Petitioner was also given the mandate to manage the said bank account.
- iii. The mutation of the property in the name of the Testator was applied vide mutation letter dated 13th December, 2013.
- iv. The Power of Attorney and Rent Agreement in favour of the Petitioner was executed on the same date, i.e., 9th December, 2013.
- v. Finally, the Will was also executed on 28th December, 2013.

21. As noted above, the said Will was neither registered, nor notarized; one of the attesting witnesses to the Will was the Court clerk of the Advocate, who prepared the Will; there is also a stark contrast in the testimonies of the two attesting witnesses with regard to the preparation of the Will; the Petitioner himself in his complaint filed before the CMM, Saket Courts, Delhi has stated that the Testator suffered from depression; the Testator expired barely a month after the Will was executed; the Testator gave a GPA in favour of the Petitioner to operate his bank account with the State Bank of Patiala, Mall Road Branch, Patiala; the mandate for the joint bank account with Kotak Mahindra Bank was also given in favour of the Petitioner and; significantly, there are mismatches in the signatures and the spellings of the names of the Testator in different documents.

22. The only explanation offered by the Petitioner in respect of the documents executed in his favour by the Testator is that it was done out of

love and affection. In my view, this is not a satisfactory explanation. All the aforesaid factors taken together clearly give rise to suspicion with regard to execution of the Will. The events narrated above lead me to believe that the Petitioner in connivance with the attesting witnesses, hatched a conspiracy to usurp the estate of the Testator, who apparently suffered from depression, lived alone, was not married and did not have any close relatives. It appears that the Petitioner exercised undue influence and control over the Testator.

23. Senior Counsel for the Petitioner has placed reliance on the judgment of the Supreme Court in *Madhukar D. Shende v. Tarabai Shedage*, (2002) 2 SCC 85, to submit that suspicion alone cannot form the foundation of a judicial verdict. There is no dispute with the aforesaid principle. However, the same judgement also holds that the conscience of the Court has to be satisfied by the propounder of the Will, so as to dispel any suspicious or unnatural circumstances.

24. In the present case, the Petitioner has failed to satisfy the court that the Will was signed by the Testator out of his own free will or that the Testator was of sound and disposing state of mind at the time of execution of the Will or that the Testator understood the nature and effect of his dispositions. The onus of proving the Will is on the propounder of the Will and the propounder of the Will has to lead credible evidence to show that the Will executed by the Testator was a legally valid document. The Petitioner while seeking probate of the aforesaid Will has failed to clear thick clouds of suspicious circumstances hovering over the genuineness and validity of the Will.

25. To conclude, I am satisfied that the subject Will is surrounded by a large number of suspicious circumstances, which are material in nature and

which have gone unexplained. Therefore, the aforesaid Will cannot be probated from any standpoint.

26. The present petition is dismissed.

27. All the pending applications stand disposed of.

AMIT BANSAL, J.

DECEMBER 21, 2022

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