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

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Pronounced on: 11.07.2023+ **FAO(OS) 347/2012 & CM APPLs. 15602/2013, 20920/2022,
47492/2022****AJIT SINGH & ORS**

..... Appellants

Through: Mr. Paras Kuhad, Sr. Advocate
with Mr. Manu Aggarwal, Mr.
Jitin Chaturvedi, Mr. Shouib
Hussain and Mr. Shubham
Budhiraja, Advocates.

Mr. Kirtiman Singh and Ms.
Shreya Mehra, Advocates for
the Trustee.

versus

STATE & ORS

..... Respondents

Through: Mr. Rishikesh Kumar, ASC
GNCTD with Mr. Aditya Raj,
Mr. Muhammad Zaid, Mr.
Sudhir Kumar Shukla and Ms.
Sheenu Priya, Advocates.

Mr. T.K. Ganju and Dr. Manish
Singhvi, Sr. Advocates with
Mr. Prateek K. Chadha, AAG,
State of Rajasthan, Mr. Sreekar
Aechuri, Mr. Arpit Prakash and
Mr. Vrishank Singhania,



Advocates for State of Rajasthan.

Mr. Sandeep Sethi, Sr. Advocate with Ms. Fareha A. Khan, Ms. Niyati Kohli and Mr. Rishabh Parikh, Advocates for R-3.

Mr. Tushar Sannu, ASC for GNCTD.

+ FAO(OS) 348/2012, CM APPLs. 46546-47/2022 & 3579/2023
PARMESHWAR PRASHAD (SINCE DECEASED)

... Appellant

Through: Mr. Sandeep Sethi, Sr. Advocate with Ms. Fareha A. Khan, Ms. Niyati Kohli and Mr. Rishabh Parikh, Advocates.

versus

STATE & ORS

..... Respondents

Through: Mr. T.K. Ganju and Dr. Manish Singhvi, Sr. Advocates with Mr. Prateek K. Chadha, AAG, State of Rajasthan, Mr. Sreekar Aechuri, and Mr. Vrishank Singhania, Advocates for State of Rajasthan.

Mr. Devendra Raghav and Ms. Rajeshwavi, Advocates for interveners.



Mr. Tushar Sannu, ASC for
GNCTD.

+ FAO(OS) 211/2013

STATE OF RAJASTHAN

..... Appellant

Through: Mr. T.K. Ganju and Dr. Manish Singhvi, Sr. Advocates with Mr. Prateek K. Chadha, AAG, State of Rajasthan, Mr. Sreekar Aechuri, Mr. Arpit Prakash and Mr. Vrishank Singhanian, Advocates for State of Rajasthan.

versus

GAJ SINGH JI OF JODHPUR & ORS.

..... Respondents

Through: Mr. Sandeep Sethi, Sr. Advocate with Ms. Fareha A. Khan, Ms. Niyati Kohli and Mr. Rishabh Parikh, Advocates for R-5.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE VIKAS MAHAJAN

J U D G M E N T

NAJMI WAZIRI, J.

Facts:

1. These three appeals impugn the judgment passed by the learned Single Judge on 03.07.2012 dismissing the appellant's Testamentary



Case No. 26/1987 seeking probate of the last Will and Testament dated 30.10.1985, executed by Late Raja Bahadur Sardar Singh of Khetri ('Testator'). While FAO(OS) 347/2012 has been filed by the Trustees of the Khetri Trust, the beneficiary under the Will, FAO(OS) 348/2012 has been filed by the sole surviving Executor of the Will, both of whom challenge the dismissal of the petition. FAO(OS) 349/2012 filed by the State of Rajasthan impugns the judgement to the limited extent that the Trustees of the Khetri Trust (Appellants in FAO(OS)(347/2012)) were permitted to be impleaded.

Background to the dispute

2. The Testator was a well educated man, having studied at Cambridge University and completed his Bar-at-Law from England. He was a Member of Parliament (Rajya Sabha) as well as India's Ambassador to Laos. Being conscious of the fact that he had no Legal Heirs ('LRs'), the Testator deliberated with qualified persons from the fields of finance and law, about the treatment of his estate after his demise. Two such professionals were Mr. P.N. Khanna, who was the Testator's Chartered Accountant for many years and the other was Mr. Danial Latifi, Senior Advocate, a personal friend of the Testator. His Will was drafted by Mr. Danial Latifi and was executed in two identical counterparts at Tis Hazari Courts, Delhi on 30.10.1985 in the presence of two attesting witnesses, namely, Mr. P.N. Khanna (PW1) and Mr. R.K. Singh (RW8), who put their hands to the Will and the same was presented in a sealed envelope to the Registrar. On the sealed envelope, the following text was inscribed with the signatures of the Testator, Mr. P.N. Khanna, Mr. R.K. Singh and Registrar,



Delhi. Its photocopy is reproduced as under:

ANNEXURE-P-5

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WILL OF RAJA BAHADUR SARDAR SINGH OF KHETRI S/o RAJA BAHADUR SINGH
 AMAR SINGH OF KHETRI, 5 SARDAR PATEL ROAD, KHETRI HOUSE
 NEW DELHI
 The Sealed Copy of Will deposited by Raja Bahadur
 Sardar Singh is identified by Sd/- N. Khanna
 Sd/- L. Chakrabarti, No. 14/15 - Connaught Place
 N. Delhi & Sd/- R.K. Singh, Advocate, The Sealed
 Copy of Will only SE no. 100/2011
 EXP-2
 (R.K. Singh) (R.K. Singh)
 (RAJA BAHADUR SARDAR SINGH)
 SINGH
 (G.H. DIXIT)
 Registrar, Delhi

TRUE COPY

सत्यमेव जयते



= Sealed in my presence.

Bamdhani

2/3/95

4. P. R.



सत्यमेव जयते



Typed Copy of the sealed envelope: (to be replaced)

“Will of Raja Bahadur Sardar Singh of Khetri S/o Raja Bahadur Amar Singh of Khetri, 5, Sardar Patel Road, Khetri House, New Delhi.

The Sealed cover of Will deposited by Raja Bahadur Sardar Singh is identified by Sh. P.N. Khanna S/o L. Bharat Ram R/o 14/15, Connaught Place, N. Delhi & Sh. R.K. Singh, Advocate.

The sealed cover of Will only and no monogram.

Sd/-

(Raja Bahadur Sardar Singh)

Sd/- 30.10.11

(G.K. Dikshit)

Sd/-

(P.N. Khanna)

Sd/-

(R.K. Singh)

Advocate”



3. The last Will and Testament dated 30.10.1985 as retrieved from envelope reads as under:-

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THIS is the LAST WILL AND TESTAMENT OF ME,
Raja Bahadur Sardar Singh of Khetri, aged 65,
residing at No 5, Sardar Patel Rd, New Delhi,
110 021

AND I HEREBY CANCEL AND REVOKE all my previous
Wills and Codicils

WHEREAS

A. I am a Citizen of India, subject to the
Hindu Law of Succession, and am, under the
appropriate provisions of the Indian Succession
Act and other laws, fully competent to make this
Will and to create the Trusts herein.

B. I have no relative of the class mentioned
in Section 118 of the Indian Succession Act.
Nevertheless, to avoid any false claims, it is
my intention to have this Will deposited in safe
custody with the appropriate authority as
provided by law.

C. I am possessed of immovable and movable
assets as appear from my Wealth Tax Returns.

NOW

1. I hereby appoint the following persons to
be and to act Jointly as Executors hereof,
provided that they may by unanimity, appoint
from time to time one of their number as
Managing Executor;

- (a) Lady Olga Manning of Hampton Court
Palace, East Molesey, Surrey
- (b) Mr Daniel Latifi, Senior
A-20 Neeti Bagh, New Delhi
- (c) Mr Romesh Thapar, 20, Kautiliya Marg,
New Delhi 110 021
- (d) Mr Parmeshwer Prashad, Mgr Khetri
Investment Corporation (P) Ltd, 1/9 Rani
Jhansi Rd, New Delhi 110 005

2. I also appoint the said Executors to be
Trustees of the Trust hereby created

3. I hereby bequeath and give unto and to my
said Executors and Trustees, (save and except
such specific assets or properties of mine as I
may exclude herefrom by any specific legacy that
I may, hereafter make in favour of any person,
by this Will or by any Codicil hereto that I may
make) ALL THOSE my properties, movable or
immovable, anywhere, upon trust as below appears.

ATTESTED

Lawyer Judicial

True Copy of

TRUE COPY

4

Sardar Singh of Khetri

A. [Signature]

B. R.K. Singh



4. The name of the Trust shall be the KHETRI TRUST.

5. The Trusts herein are:

The promotion of Education, that is to say the advancement of the study of science, literature and the arts, by the grant of scholarships to deserving students for study in India or abroad, by the establishment of libraries, reading rooms, schools, academies, laboratories, research centres or other institutions, as funds allow and as the Trustees think fit.

Provided that the Trustees shall be competent, with the sanction of the High Court, to vary, enlarge or restrict the objects of this Trust.

6. The Executors and Trustees shall be entitled to remuneration for their services to these Trusts at such amount as they may fix, not exceeding Rs 3000 per month. This may, in appropriate circumstances, be increased with the sanction of the High Court, upon application made in that behalf. Whenever she is in India Lady Manning shall be entitled to free residence and travel at and between Khatri House New Delhi, Khatri House Jaipur and Sukh Mahal Khatri, with arrangements and facilities as she enjoyed in my lifetime.

7. The number of Trustees shall not at any time be fewer than three nor more than five. In the event of the death, resignation or incapacity of any Trustee, the surviving or remaining Trustees shall be empowered to appoint a trustee or trustees in this behalf. Provided that on the death, resignation or incapacity of Lady Manning, named in paragraph 1 hereinabove, the Hon Francis Manning, s/o Lord & Lady Northbrook, East Stratton Lodge, East Stratton, Winchester, Hants, residing at Flat No 26, 333 Kings Rd London SW3 shall replace her as Executor and Trustee.

Lady Singh of Khatri

A/Resamur

B/R.K. Singh

ATTACHED
M
Liaising Judicial Dept
Govt. of India



- 3 -

IN WITNESS WHEREOF I HAVE HERETO SET MY HAND
THIS THIRTIETH DAY OF OCTOBER 1985 AT NEW DELHI,
in the presence of Witnesses known to me whose
names addresses and signatures appear below.

Raja Bahadur Sardar Singh of Khetri / C

RAJA BAHADUR SARDAR SINGH OF KHETRI

WITNESSES

- A / (1) Sasaram (P.N. KHANNA)
14/15 F. CONNOUGHT PLACE
NEW DELHI - 1.
- B / (2) R.K. Singh (Advocate)
Sl. D. Lalit Sr. Ad. 6, Supreme Court
New Delhi - 1

Certified to be True Copy

Examiner Judicial Department
High Court of Delhi
Authenticated by the
of the Indian Evidence Act.

TRUE COPY



4. The Testator willed his entire estate, movable and immovable assets as appeared from his Wealth Tax Returns, upon a Trust called 'Khetri Trust', created by the Will and Testament dated 30.10.1985 itself, for which he appointed four Executors and Trustees, namely: (i) Lady Olga Manning of Hampton Court Palace, East Molesey, Surrey; (ii) Mr. Danial Latifi, Senior Advocate, A-20, Neeti Bagh, New Delhi; (iii) Mr. Romesh Thapar, Kautilya Marg, New Delhi; and (iv) Mr. Parmeshwar Prashad, Manager Khetri Investment Corporation (P) Ltd., 1/9 Rani Jhansi Road, New Delhi. The bequeathed assets were to vest in the Khetri Trust and were to be used largely for educational research and scientific purposes. The Trustees were also vested with the right to seek sanction of the High Court to enhance their remuneration beyond Rs.3,000/- per month, for their services to the Trust.

5. Perusal of Recital B of the Will shows that the Testator was conscious that his property could well be frittered away or otherwise would lapse to the State by the Law of Escheat, if he were not to arrange for its use as per his wishes. The Testator was also conscious of requirement of section 118 of the Indian Succession Act, 1925 ('Succession Act') which reads as under:-

“118. Bequest to religious or charitable uses.—No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons:



[Provided that nothing in this section shall apply to a Parsi.]”

6. It is in this context, that the Testator, evidently upon legal advice, stated in Recital B of the Will and Testament that “*I have no relative of the class mentioned in Section 118 of the Indian Succession Act. Nevertheless, to avoid any false claims, it is my intention to have this Will deposited in safe custody with the appropriate authority as provided by law.*”

7. According to the appellant, the Will was executed at the office of Registrar at Tis Hazari Courts, Delhi on 30.10.1985 in the presence of two witnesses i.e. Mr. P.N. Khanna (PW1) and Mr. R.K. Singh (RW8). The latter had worked in the Chamber of Mr. Danial Latifi, Senior Advocate from 1981 to 1986. Mr. R.K. Singh (RW8) had passed his law examination in 1974 and was enrolled as an Advocate in 1977.

8. Subsequent to the execution of the Will, the Testator executed a Codicil dated 07.11.1985 in two identical counterparts, for the sake of clarifying certain aspects including the role of the Trustees and Executors residing in United Kingdom. The Codicil was executed by the Testator in the presence of the same two attesting witnesses to the Will and Testament dated 30.10.1985 namely Mr. P.N. Khanna (PW1) and Mr. R.K. Singh (RW8). The said two witnesses appended their signatures to the Codicil in the presence of the Testator and each other. The original Will and Testament was deposited with the Registrar. The original Duplicate Will and the two duly executed identical counterparts of the Codicils were handed over to Mr. Latifi



by the Testator. The latter passed away on 28.01.1987. A couple of days later, Mr. Danial Latifi, Senior Advocate, informed Mr. Romesh Thapar and Mr. Parmeshwar Prashad (PW2), both Trustees and Executors of the Will and Testament about the Will and handed over the identical Duplicate counterpart of the Will and Testament along with the original Codicil to Mr. Romesh Thapar in the presence of Mr. Parmeshwar Prashad (PW2).

Test Cas. 26/1987

9. A petition (Testamentary Case No. 26/1987) seeking grant of probate of the Will and Testament was filed under section 276 of the Succession Act by the three of the Executors appointed under the Will and Testament (and not merely by Mr. Parmeshwar Prashad (PW2)). The probate petition was duly supported by the affidavit of one of the attesting witnesses, i.e. Mr. P.N. Khanna (PW1), in fulfilment of requirement of section 68 of the Indian Evidence Act, 1872 ('Evidence Act'). Mr. Danial Latifi, who was appointed as a Trustee and Executor under the Will, resigned as Executor and Trustee by letter dated 15.02.1987 addressed to his fellow Executors and Trustees.

10. In the succeeding years, three of the Executors and Trustees appointed under the Will and Testament dated 30.10.1985 passed away on the following dates:-

- (i) Lady Olga Manning of Hampton passed away on 17.09.1993;



(ii) Mr. Romesh Thapar passed away in September, 1987; and

(iii) Mr. Parmeshwar Prashad (PW2) passed away on 09.03.2003.

Lord Northbrook, the appellant in FAO(OS) No.348/2012 remained the only surviving Executor. Therefore, keeping in view the large estate of the Testator, the Probate court examined Lord Northbrook on 25.09.2004 to ascertain whether he was willing to discharge his legal obligations as an Executor and recorded his statement in the affirmative. Lord Northbrook is also a Trustee of Khetri Trust.

11. By an order dated 08.11.1996 in FAO(OS) 166/1996, State of Rajasthan was added as a party-respondent. The order recorded the concession of the State of Rajasthan that it will not seek to cross-examine any of the witnesses, and will make submissions based on material on record.

12. Though before the learned Single Judge, the State of Rajasthan had raised an objection as to non-compliance with the requirements of Sections 276 and 283(3) of the Succession Act, no ground has been raised by the State of Rajasthan in its appeal challenging the finding of the impugned order rejecting this contention, nor have submissions been made in this regard. It appears that the State of Rajasthan has accepted the findings, and the same is thus not being considered.

13. The fact remains though, that citations were published in the newspaper 'The Statesman' dated 23.03.1987 apropos the Testator having died intestate; seven persons had filed their objections to the grant of probate. The State of Rajasthan was aware of the pendency of the probate petition because it had invoked the provisions of Rajasthan Escheat Regulation Act, 1956 and issued a Notification under section



6(1)(b) thereof. Therefore, it had sufficient notice and knowledge about the pending probate petition and the requirement of the statute stood met.

14. Four of these objectors passed away during the course of the proceedings. The remaining three objections were eventually withdrawn pursuant to liberty granted by the court under Order XXIII Rule 1 of the Civil Procedure Code, 1908, ('CPC').

The impugned order

15. The probate petition was dismissed by the learned Single Judge on the ground *inter alia* that it was not proven that: i) the Testator and the attesting witnesses had signed the Will and at the same time in the presence of each other, ii) that there were surrounding suspicious circumstances established in view of the testimony of Mr. R.K. Singh (RW8), who had deposed that he had not seen the Testator sign the Will and iii) that Gokul Anand, Personal Assistant of the Testator was not summoned as a witness.

16. The learned Single Judge summarised his conclusions in paragraph 101 of the judgement, which can be usefully summarised as below:

- a. The petitioners failed to prove the Will and Codicil, since PW1, Mr. P.N. Khanna's testimony is contrary to that of RW8, Mr. R.K. Singh, who does not stand to gain from lying.
- b. Testimony of PW3, Mr. Danial Latifi contradicts testimony of PW2, Mr. Parmeshwar Prashad (one of the three original



petitioners, since deceased) as to date and place of signing the Will by Testator and two attesting witnesses.

- c. Non-production of Mr. Gokul Anand, the Personal Assistant of the Testator is curious and suspicious and the reasons given therefore (that it would delay the proceedings) is not convincing. He was one of the most important witnesses, and his testimony would have cleared all doubts as to place of signing the Will.
- d. The Will is incomplete and lacks particulars of what properties are being bequeathed.
- e. The testimony of PW3, Mr. Latifi's appears to indicate that he signed the Will, but no such Will bearing his signatures have been produced. This lends credence to RW8, Mr. R.K. Singh's testimony that he signed the Will on 29.10.1985 at 5, Sardar Patel Marg, New Delhi and not on 30.10.1985 at the office of the Registrar. It further lends credence to the testimony of RW8 that he signed the Will in the presence of PW2 and not the Testator. On preponderance of probabilities, the Will has not been proven in terms of Section 63 of the Succession Act read with Section 68 of Evidence Act.
- f. PW1's testimony does not disclose the presence of PW3, who stated that he was present as a friend of the Testator and not in his professional capacity. PW3's testimony is more preferable to that of PW1. RW8 has *inter alia* deposed that he has never seen the Testator. Thus, neither the Will, nor the Codicil could have been signed by the Testator in the presence of RW8, who



is one of the attesting witness.

- g. The reasons for withdrawal of the various objectors are inexplicable, from which it can be inferred that they were compelled to withdraw.
- h. The Will was not produced in original, and was not exhibited either. The duplicate copy had been produced. The Will, and the cover in which it was sealed bear signatures of RW8 in different inks, indicating that they were not signed at the same time. PW1 has deposed that he may have signed more than two copies of the Will. On preponderance of probabilities, the Will and Codicil have not been proven.

Contentions of the Parties:

17. The State of Rajasthan defended the impugned order and submitted *inter-alia* that the impugned order has rightly dismissed the testimony because: (i) there is a controversy and suspicion around the alleged Will; (ii) it is void for uncertainty under Section 89 of the Succession Act; (iii) Khetri Trust was not registered; (iv) the Will has not been proven in accordance with section 63 of the Succession Act; (v) the testimony of Mr. P.N. Khanna cannot be relied upon and the alleged Will does not stand the test of section 63(c) of the Succession Act; (vi) adverse inference is to be drawn against the petitioner for not producing Mr. Gokul Anand; (vii) deposit of Will under section 42 & 43 of the Registration Act, 1908, for registration cannot be an alternative mode of proof of Will under section 71 of the Evidence



Act and the deposit of the Will under aforesaid section cannot create a presumption for the execution of the Will.

18. In its own appeal, State of Rajasthan challenged the impugned order to the limited extent of allowing the Application filed by Trustees seeking to be impleaded as party-respondents. Though certain grounds had been raised in support thereof, as to whether Trustees or the Trust could be made a party-respondent in a petition seeking probate, since the entire impugned order will be set aside on the appeal of the Executor (FAO(OS) 348/2012), this court deems it appropriate to not enter upon the issue of whether a Trustee/Trust, i.e the eventual beneficiary of a Will, is a necessary or proper party in a petition seeking probate thereof, *a fortiori* when no objection thereto is raised by the petitioner.

19. The appellants in FAO(OS) 347/2012 and 348/2012 have both challenged the impugned order to the extent it dismissed the probate petition. They contended *inter alia* that (i) the impugned order failed to limit itself to assessing whether the Will and Codicils were executed and proved in terms of the law, instead it proceeded extensively on the basis of various presuppositions, (ii) the impugned order was contradictory in its assessment of the various testimonies, placing undue reliance on that of RW8, despite the unopposed testimonies of PW1, PW3, and more particularly, that of the office the learned Registrar which wholly established the execution of the Will and a case for grant of Probate, (iii) there is sufficient information in the Will, directly as well as by incorporation, to indicate the assets it sought to bequeath, therefore, there was nothing vague about the



assets or the Executor or about the beneficiary, (iv) PW3 did not depose that he signed the Will but that he signed the *Bill* (issued to the Testator), which appears to have been wrongly transcribed.

EXECUTION AND PROVING THE WILL:

20. The appellant submits that the manner of execution of a Will and Testament is stipulated in section 63 of the Succession Act which reads as under:-

63. Execution of unprivileged wills.—*Every Testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules:—*

(a) The Testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the Testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the Testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the Testator, or has received from the Testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the Testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”



21. The State of Rajasthan contends that the Will has not been proven in accordance with section 63 of the Succession Act, which requires that it be attested by at least two witnesses with their signatures, who have seen the Testator put his signature on the Will or has received an acknowledgment from the Testator about his signature on the Will; it is argued that the attesting witness who has signed the Will must have so signed it with the intention to attest the document, i.e. *animus attestandi*, is essential to make it a valid attestation for a genuine Will.

22. The manner of proving of the Will is contained in section 68 of the Evidence Act, which read as under:-

68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

23. In FAO(OS) 348/2012 the appellant himself filed an application to summon both the attesting witnesses to the Will and to the Testament, as well as the Registrar of Assurances, Delhi- to produce the original Will and Testament. By order dated 05.10.1987, the High court summoned the aforesaid witnesses, however, Mr. R.K.



Singh did not appear for deposition. In the hearing held on 12.10.1987, one Ms. Kusum Lata from the Office of the Registrar, brought a sealed cover containing the original Will and Testament, which was lying deposited in that office. On the said date, the appellant also produced in court the original Codicil executed by the Testator. The probate court by its order dated 12.10.1987 has recorded that three original documents, namely, (i) the original Will and Testament (Ex.P-1) lying deposited with the Registrar; (ii) the original sealed envelope (Ex.P-2) containing the Will and Testament; and (iii) the original Codicil (Ex.P-3) produced by Mr. Parmeshwar Prashad (PW2) were seen in original by the parties, and the original will was re-sealed.

24. It is contended by the appellant that as per provisions of section 68 of the Evidence Act ('Evidence Act'), it is sufficient even if one attesting witness is called for evidence to prove the execution of the Will. Accordingly, the appellant produced Mr. P.N. Khanna, who was a Chartered Accountant and the attesting witness, as PW1 to prove the execution of the Will and Testament dated 30.10.1985 and had made the following statement:-

".....Raja Bahadur Sardar Singh of Khetri had executed a Will at Tis Hazari, Delhi outside the Registrar's office, in my presence and in presence of Shri R.K. Singh, Advocate who was the junior of Shri Danial Latifi, Advocate... I had gone to Tis Hazari Courts on 30th October 1985 and reached there at 10 a.m. I had gone so at the request of the Testator. Shri R.K.Singh had also arrived there. The Testator was having a typed draft of Ex.P1 with him. This Will was signed by the Testator on portions sidelined 'C' in my presence and thereafter at the request of the



Testator I had attested it by signing at portions sidelined 'A' on all its pages in presence of the Testator and similarly, Mr.R.K. Singh, Advocate had seen the Testator signing this Will at portion sidelined 'C' on all its pages and had attested it by signing at portions sidelined 'B' on all its pages. After the Will had been executed, under his instructions the staff of the Testator put it in a sealed cover and the Testator deposited it in the office of the Registrar in my presence and I remained with him throughout. As far as I remember I had filled in some form which was required for depositing the Will with the Registrar. I have also seen the sealed cover Ex.P2. This was also signed in my presence by the Testator at portion sidelined 'C'. I had also signed it at that time at portion sidelined 'A' and Shri. R.K.Singh, Advocate signed it at portion sidelined 'B'.

On 7th November 1985, at the request of the Testator, I had gone to his residence where Shri R.K.Singh, Advocate had also come. The Testator was having a typed draft of the codicil Ex.P3 and in our presence he signed the same and after I and Shri R.K. Singh, Advocate had seen the Testator signing it, at the request of the Testator, we attested this codicil by signing as attesting witnesses. I have attested this codicil by signing at portion sideline 'A'. Shri R.K.Singh, Advocate attested it by signing it at portion sidelined 'B' and the Testator had signed it at portion sidelined 'C'."

25. Mr. Paras Kuhad, the learned Senior Advocate for the appellant submits that since Mr. P.N. Khanna (PW1) was not cross examined in respect of the above, therefore, his testimony, as an attesting witness to the Will and Testament dated 30.10.1985 stands proven. The cross-examination on behalf of the various objectors elicits the following statement as regards signing of the will:

"This is incorrect to suggest that the Will Ex.P1 and the



codicil Ex.P3 were got signed by Parmeshwar Prasad under coercion from the Testator or that I had attested it on the asking of Parmeshwar Prasad.

...Crosses encircled X, X-1 and X-2 on codicil Ex.P3 might have been marked by the person who had prepared the same. They were not marked by me. They were already in existence when the Testator, myself and Shri R.K. Singh, Adv. signed this document. It is incorrect to suggest that I had not seen the Testator signing the codicil Ex.P3 or that I had not attested it in the presence of the deceased or that it had been sent to me and I signed it later on. The Will Ex.P1 was firstly signed by the Testator at portioned sidelined 'C' on all its pages and thereafter at his request I had attested it by signing at portions sidelined 'A' and thereafter Shri R.K.Singh, Advocate had attested it by signing it at portions sidelined 'B'

Beside the Testator, myself and R.K. Singh Advocate, the personal assistant of the Testator Mr. Golka Nand and two members of his staff excluding the driver were present when Will Ex.P1 was executed at Tis Hazari Courts, Delhi. I do not know if anybody else was also present at that time, but as far as I think the above persons only were present....Except for the Testator, myself and Shri R.K. Singh, Advocate none else was present in the bed-cum-sitting room of the Testator when codicil Ex.P3 was signed."

26. In support of his submission, the learned Senior Advocate for the appellant relied upon the dicta of the Supreme Court in ***Muddasani Venkata Narsaiah v. Muddasani Sarojana, 2016 (12) SCC 288***, which held that when the evidence of a witness is not tested in cross-examination, the evidence of such a witness is to be ordinarily accepted. Relying on the above, he submits that the requirements of



Section 68 of the Evidence are complied with, and the Will and Codicil stand proven, because the testimony remained unaffected even after cross-examination. Indeed, the clear and categorical testimony of PW-1 was not even challenged in cross-examination.

27. The court finds merit in this contention. During the course of trial, it has been established by the testimony of PW1 that (a) the Testator signed the Will as well as the Codicil in his presence, as well as in the presence of RW8, (b) PW1 and RW8 signed the Will in the presence of the Testator, immediately after the Testator had signed the same, (c) RW8 was present at the Office of the Registrar at Tis Hazari Courts when the Will was signed and presented to the Registrar, (d) PW1 and RW8 signed the cover in which the Will was sealed. These facts also appear to be borne out from the contents of the documents bearing the signatures of the Testator, PW1 and RW8, which are in effect corroborated by the testimony of PW1.

28. There appears to be not even a suggestion to PW1 that RW8 was not present when the Will was signed or that RW8 did not sign the Will, Codicil or the cover/envelope in which the Will was sealed. Nor was there any suggestion that the Will had been already signed by the Testator before 30.10.1985.

29. In the court's view, by the testimony of PW1 the requirements of section 68 of the Evidence Act stand complied with as far as proving the Will and the Codicil are concerned. The impugned order had recorded some concerns about the reliability of PW1's testimony, based on RW8's testimony, which will be dealt with at a more appropriate juncture in this judgement.



30. After PW-1, Mr. Parmeshwar Prashad, one of the Executors was examined as PW-2, to prove the signatures of the Testator on the Will. He deposed that the custody of the original Will and the Codicils was handed over by the Testator to Mr. Danial Latifi, Senior Advocate, who in turn handed over the same to Mr. Romesh Thapar his presence. PW 2 has deposed that he did not know when and where the Will and the envelope were signed and executed. Notably, no suggestion was put to PW2 apropos the manner of execution and deposit of the Will, neither was any suggestion put to him that Mr. R.K. Singh (RW8) has put his signatures as an attesting witness on the Will and Testament, at the instance of PW2 himself or in the absence of the Testator or PW1. On the basis of the two reliable and substantive witnesses presented by the appellant, it was evident that his case for grant of probate stood proven.

31. Seven objectors led eight witnesses in evidence, to oppose the grant of probate. Notably, none of them denied the testimony of Mr. P.N. Khanna (PW1) with respect to the execution and deposit of the Will and Testament on 30.10.1985 in the presence of both the attesting witnesses. A suspicion was sought to be raised by State of Rajasthan that since Mr. Parmeshwar Prashad (PW2) purportedly looked after the affairs of the Testator, he may have obtained the Testator's signatures on the blank papers and thereafter, used it to fabricate the Will and Testament. Apropos objectors' witnesses RW1 and RW3 to RW6, the learned Single Judge concluded that they were "propped up witnesses". He reasoned as under:-

"87. An analysis of these witnesses which have been



produced on behalf of the respondents barring RW-2, Kailash Narain Rawat, Tehsildar, who proved the attachment of properties of the deceased/Testator and RW-7, Kusum Lata, who proved the entry of the Will of Parmeshwar the deceased/Testator in the record of the Registrar, the remaining witnesses are propped up witnesses by the objectors. As a matter of fact, one of the witness is the objector himself. He has withdrawn his objection; therefore, his testimony is of no consequence....

32. The learned Single Judge specifically rejected the contention that the Will may have been fabricated or forged on blank papers by PW2. This court too, finds such a suggestion nothing short of incredulous, given the educational qualifications, experience, stature, capability and wisdom of not merely the Testator. The court is also cognizant of the persons who were advising him on a professional and personal basis, of the persons who were named as Trustees in the bequest. The State of Rajasthan has not challenged this finding in its appeal either.

33. The impugned order, however, proceeded to observe as under:

93. ...Therefore I feel it is too farfetched to allege that the Will was fabricated or forged by PW-2, Parmeshwar Prasad, but certainly the fact of the matter remains that PW-2, Parmeshwar Prasad, must have manipulated things in such a manner so the formalities of the Will are sought to be completed at different times without actually making all the three persons, namely, the deceased/Testator and the two attesting witnesses to sign simultaneously because RW-8, R.K. Singh, has specifically stated that when he went to Sardar Patel Road, he did not see the deceased/Testator and it was PW-2, Parmeshwar Prasad, who made him sign the document in question. To that extent, one can certainly



say that this is a suspicious circumstance which goes against the petitioners.”

34. The above inference, in our opinion, is not sustainable because of the abject lack of cross-examination of PW2 in this regard. Barring a solitary suggestion that the Testator was compelled or manipulated by PW2 to execute the Will so as to benefit from it, a suggestion was denied by PW2, there was no basis for such an inference. Instead, there is considerable evidence in the appellant’s favour, which appears to have not been appreciated by the impugned order.

35. Ms. Kusum Lata (RW7) from the Office of the Registrar confirmed that the Register produced by her from the aforesaid office bears Entry 335 showing that a Will and Testament of the Testator was deposited and that Mr. P.N. Khanna (PW1) and Mr. R.K. Singh (RW8) were witnesses to the Will and Testament. She deposed as under:-

“I have brought Book No.5 which is maintained in the office of the Registrar in which entries are made in respect of the Wills deposited in the office of the Registrar. There is an entry bearing No.335 in this register which shows that a will of Raja Bahadur Sardar Singh son of Raja Bahadur Amar Singh was deposited in our office on 30th October 1985. It is also mentioned that the witnesses of the will are Shri P.N. Khanna son of Shri Barkat Ram and Shri R.K.Singh, Advocate.”

36. This testimony, especially when taken with that of PW1 and PW2 is of considerable significance and, in our view, negates and renders baseless, the inference that PW2 may have “*manipulated things in such a manner so the formalities of the Will are sought to be*



completed at different times without actually making all the three persons, namely, the deceased/Testator and the two attesting witnesses to sign simultaneously”.

37. The testimony of RW7 clearly shows that the Will was executed and was deposited in the office of the Registrar in the manner prescribed under sections 42 and 43 of the Registration Act, 1908, which read as under:-

“42. Deposit of wills.—Any Testator may, either personally or by duly authorised agent, deposit with any Registrar his will in a sealed cover super scribed with the name of the Testator and that of his agent (if any) and with a statement of the nature of the document.

43. Procedure on deposit of wills.—

(1) On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the Testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the Testator or his agent, and any legible inscription which may be on the seal of the cover.

(2) The Registrar shall then place and retain the sealed cover in his fire-proof box.”

38. Rule 20 of the Delhi Registration Rules, 1976 reads as under:-

“20. Book No. V. -(1) Book V is to be kept only in the office of Registrar, who alone can receive Wills in sealed covers for deposit. It shall contain the following headings:

(1) Serial Number;

(2) Superscription on the sealed cover;

(3) Description on the seal of the cover;



- (4) *Time of presentation and receipt of the sealed cover, year, month, day and hour;*
- (5) *Name of depositor;*
- (6) *Names of persons testifying to the identity of depositor;*
- (7) *Time of delivery of the sealed cover to applicant for withdrawal year, month, day and hour;*
- (8) *Names of persons testifying to the identity of the applicant and the time, of delivery;*
- (9) *Times of opening the sealed cover- year, month, day, hour.*

(2) Columns (1) to (6) shall be filled in when a Will is first deposited under section 43 of the Act. Columns (7) and (8) shall be filled up in the event of the Will being subsequently withdrawn, and column (9) shall be filled up when a Will is opened after the death of the Testator, under section 45 or 46 of the Act. All these several entries must be verified by the signature of the Registrar for the time being. When a Will had been removed by order of a court under section 46 (1) of the Act the fact shall be noted in red ink across the entry and the note shall be authenticated by the signature of the Registrar.”

39. Presumption of facts as envisaged under section 114 of the Evidence Act and Illustration (e) thereto are reproduced hereinbelow:-

“Section 114. Court may presume existence of certain facts:

...

(e) that judicial and official acts have been regularly performed;

...”

40. In view of the above, the impugned order ought to have



presumed that the official act of receiving the Will and Testament was performed by the Registrar, in accordance with law and the contents on the sealed envelope were accurately recorded by the Registrar, especially because the Registrar, in terms of provisions of section 43 of the Registration Act, 1908 and the rules applicable thereunder, satisfied himself that the person presenting the Will and Testament is the Testator himself and thereafter transcribed in Register Book No. 5 and on the cover of the envelope, the names of the Testator and Mr. P.N. Khanna (PW1) and Mr. R.K. Singh(RW8) as the persons who testified to the identity of the Testator. This is all the more so, because the original Will in the sealed cover has been seen, compared to be identical to the original Duplicate produced in court with the probate petition, and the Will and cover/envelope bear the writing and signatures as set out above.

41. There is a presumption of correctness of a ‘public document.’ This presumption has gone un-rebutted, giving us no cause to disbelieve it. The Will deposited with the Registrar is a ‘public document’ within the meaning of section 74(2) of the Evidence Act.¹

42. The Supreme Court has held that an entry made by an officer in the Birth Register was in discharge of his official duties and, therefore, there was no requirement to examine the officer.²

43. There is presumption about the validity and regularity of the official act. The onus to prove the contrary is on the person who seeks

¹*Bhasin Film Corporation v. M/s Shalimar Cinema*, AIR 1983 Del 317

²*Harpal Singh and Another vs. State of Himachal Pradesh*, 1981 (1) SCC 560



to rebut the presumption by cogent and relevant material.³

44. The Supreme Court held that once a certified copy of the Will has been placed on record from the office of the Registrar, the onus to prove that the registration was not in accordance with law is on the party alleging so.⁴

45. In the present case, the envelope containing the original Will was produced by the Registrar, it was opened in court and seen, as has been reproduced hereinabove. This is not rebutted by any cogent and relevant evidence. The envelope of the original Will stands proven and its contents, i.e. the Will too stand proven. In any event, there is no basis for the inference drawn in the impugned order, as regards the role played by PW2 in respect of execution or registration of the Will. Therefore, that inference and finding cannot be sustained. The impact of RW8's testimony on this inference will be dealt with at a more appropriate juncture in this judgement.

46. In our view, the testimonies of PW1 and PW2, which have gone uncontroverted in cross-examination, read with the testimony of RW7, the Will and the cover in which it was sealed, make it abundantly clear that the requirements of proving the Will, in terms of Section 68 of the Evidence Act are complied with, and the requirement of proving that the Will was executed, in accordance with Section 63 of Succession Act, was complied with. This, by itself, is sufficient to allow Test Cas 26/1987. However, inasmuch as the impugned order has drawn certain conclusions that may have a bearing on this, the same are being

³*Surendra M. Mittal v. NCDRC*, 2008 AIR (Del) 35

⁴*Smt. Swaran Lata vs. State*, 2006 AIR (Del) 21



discussed.

Section 89 of the Succession Act requires the property to be specified and the Will is bad for not doing so

47. The impugned order held that the Will suffered from ambiguity since it did not specify what part of the estate of the Testator forms a part of the bequest.

48. As perused from the Will reproduced hereinabove, the Testator has specified that he bequeaths *“ALL THOSE my properties, movable or immovable, anywhere, upon trust as below appears. The name of the Trust shall be the KHETRI TRUST.”* The beneficiaries of the Will had been specified. The words used in the Will are *“ALL THOSE my properties, movable or immovable, anywhere.....”*.

49. Recital (C) of the Will propounded reads as under:-

“I am possessed of immovable and movable assets as appear from my Wealth Tax Returns.”

50. The Will, at para. 3, *inter alia*, reads as under:-

“I hereby bequeath and give unto and to my said Executors and Trustees....., ALL THOSE my properties, movable or immovable, anywhere. upon trust as below appears.

...The name of the Trust shall be the KHETRI TRUST.”

51. Quite clearly, the assets of the Testator, as contained in his Wealth Tax Returns, i.e. all those of his properties, movable or immovable that may be anywhere, were bequeathed, to the named beneficiary i.e. the Khetri Trust. In our view, there was no ambiguity or uncertainty regarding the property/the subject matter or the



beneficiary of the bequest.

52. The impugned order felt that use of the term “as below appears” in para. 3 of the Will must relate to the term “properties movable or immovable”. To put it differently, the impugned order felt that para.3, by bequeathing properties movable or immovable *as below appears*, introduced an element of uncertainty because the rest of the Will did not expressly state what those properties were that were to appear below para.3.

53. However, in our view, this interpretation cannot be sustained. The term “as below appears” was preceded by the words “upon trust”, indicating that the term “as below appears” relates to the term “trust”. To put it differently, the bequest was of “ALL THOSE my properties movable or immovable”, upon the Trust as appears below. This is apparent from the fact that para.4 reads “*The name of the Trust shall be KHETRI TRUST*”.

Non-Summoning of Gokul Anand:

54. The contention of the State of Rajasthan apropos the non-summoning of Gokul Anand, Personal Assistant of the Testator, can hardly be a ground of suspicion because making of a Will is a confidential exercise and the Testator may not want the Personal Assistant to be informed of it, for reasons best known to the Testator, because disclosure to or knowledge of the same by other unrelated persons could have spread to many persons, who may have had an eye on the estate or have nursed a hope to inherit or otherwise obtain a part of the same. Unnecessary obstacles could have been created by even an employee associated with him. Besides the Personal Assistant may



not necessarily be a trusted confidante.

55. Human nature is fickle and having some wisdom of the world, the Testator took a call not to disclose the factum or contents of his Will to anyone, he did not deem necessary. The law does not require a Testator to inform a person closest to him or her of the making of a Will. In the circumstances, it can hardly be said that the stand of the Appellant, that summoning Mr. Anand and subjecting him to examination would cause undue delay was a baseless or unjustified contention.

56. In any event, the observation of the impugned order that the factum of preferring an appeal against the order summoning Mr. Anand, justifies drawing an inference against the Appellant is wholly unsustainable. Appeal, once provided in a Statute, is a matter of right, that cannot be made subject to such considerations, *a fortiori* when the Division Bench found merit in the appeal and set aside the order summoning Mr. Anand.

57. In the circumstances, the learned Single Judge has erred in inferring against the appellant for not summoning Mr. Gokul Anand.

Contentions apropos signing of the WILL by Mr. Danial Latifi:

58. As regards the answer in the affirmative by Mr. Danial Latifi to the query that he had signed the original Will, the appellant submitted that Mr. Danial Latifi had entered the witness box only to prove the bill raised by him on the Testator, especially regarding the fee paid to Mr. R.K. Singh (PW8) for the latter's assistance in the execution and registration of the Will dated 30.10.1985. It is neither the case of the Executor nor of the objector that Mr. Danial Latifi had signed the



Will. On the contrary, the bill raised by Mr. Danial Latifi on the Testator was the document in issue, for which he was being examined and he was referring to his signatures on the original bill and not the original Will. The two words ‘bill’ and ‘Will’ are phonetically similar and it appears to be an apparent inadvertent typographical error. The same error appears to have continued while typing the cross-examination of Mr. Danial Latifi.

59. The order dated 04.12.2003 passed in the Probate proceedings reads as under:-

“....Objector has prayed for an inspection of the bill (sic Will) dated 30th October, 1985 along with the further documents which are lying in the sealed cover.....”

60. Interestingly, no further questions were put to Mr. Danial Latifi regarding the signature on the Will and Testament or as to who all were present at the time of signatures.

61. The only reason why Mr. Latifi’s evidence was led by the appellants was because a doubt was raised apropos the role of Mr. R.K. Singh and whether he was paid any money for assistance in drafting, execution, and presentation of the Will, for deposit with the Registrar at Tis Hazari Court Complex. Mr. Latifi was not shown the Will to seek his confirmation as to whether it was the said Will which was “signed” by him? Nor were any questions asked of him as to where was the Will which was signed by him. The respondent’s argument of a Will being signed by Mr. Latifi is based on an answer in affirmative to a question “have you signed the original Will”.



62. In our view, the reference in Mr. Latifi's answer was undoubtedly to the bill and not to the Will. It is quite likely that Mr. Latifi misheard the word 'Will' as 'Bill' possibly due to his age or ambient noise. Alternatively, due to typographical error the word Will got typed instead of Bill and continued through in the testimony and in the order. This, in our view, is at best a minor discrepancy. Apropos minor discrepancies in recording of evidence a Division Bench of this court in ***Inder Singh & Surender Singh vs State 1977 SCC OnLine Del 143*** has held as under:

"...58. Like the Additional Sessions Judge, I think the discrepancies are too minor. Such discrepancies can and do occur in the statement of any truthful witness. Given the imperfections of the human mind it would be strange if they did not. Hence, the mere existence of some discrepancies is not of itself sufficient to discredit a witness. There must be an 'attempt to appraise their real value and effect', and 'unless there is any good ground to think that they are due to a deliberate attempt to suppress or depart from the truth it is unfair to discard the direct testimony of witnesses merely on account of such discrepancies, when there is general agreement as to the material circumstances': see Emperor v Muhammad Khan & Anr, AIR 1934 Lahore 710 (47)...."

63. More importantly, even if it is assumed that there was a counter-part of the Will which was signed by Mr. Latifi, it would not affect the grant of probate of a Will produced from the office of the Registrar of Assurances. Mr. Parmeshwar Prashad's evidence regarding handing-over of the Will to the Registrar has gone



unrebutted. Therefore, this aspect stands proven. The professional bill being referred to by Mr. Latifi, which was signed by him, is reproduced herebelow:





19

of 19

1921 1st tanks

M/s. Raja Bahadur Sardar Singh of Khatra

5

Khatra House

55 Patel Rd

New Delhi - 21

Additional fees in the matter of :-

Item	Fee
Drafting by me & execution of Will & its Registration at the Registrar of Will & its Registration	5000
Typing Charges 750	500
Mr. R.K. Singh Advocate Extra	1000
in his presence	100
Charges	
Total Rupees	6,600

Thousand six hundred only

19

by certificate

Daniel Latif
DANIAL LATIF

Exempt from stamp duty under Art. 33 (b) of Sch. I of the Indian Stamp Act (II of 1899)

Address :

Phone : 617561

Address : 61, Supreme Court, New Delhi-110001.

Phone : 382806

Daniel Latif, M.A., (Oxon.) ; Bar-at-Law ;
Senior Advocate, Supreme Court.

19

Dated

19 ANNEX-P-6

Memo of Mr. DANIAL LATIF

Due from M/s. Raja Bahadur Sardar Singh

of Khatra

Khatra House 5, Sardar Patel Rd

New Delhi - 21

Professional fees in the matter of :-

Date	Item	Fee
	Drafting by me & execution of Will & its Registration at the Registrar of Will & its Registration	5000
	Typing Charges 750	500
	Mr. R.K. Singh Advocate Extra	1000
	in his presence	100
	Charges	
	Total Rupees	6,600

(Rs. With compliments)

Daniel Latif
DANIAL LATIF

Kindly pay by cheque crossed A/c payee

Phone : 617561

Residence :

Chamber : 61, Supreme Court, New Delhi-110001.

Phone : 382806

Daniel Latif, M.A., (Oxon.) ; Bar-at-Law ;
Senior Advocate, Supreme Court.



Apropos Danial Latifi's presence at Tis Hazari on 30.10.1985:

64. The respondent says that albeit Mr. P.N. Khanna had deposed that besides the Testator, he himself and Mr. R.K. Singh, Advocate, the personal assistant of the Testator, Mr. Gokul Anand and two members of his staff excluding the driver were present when the Will (Ex. P-1) was executed at Tis Hazari Court Complex, Delhi, outside the Registrar's office, and he did not know if anybody else was also present at that time but as far as he knows, only the abovesaid persons were present.

65. Much is sought to be made by the respondent about Mr. P.N. Khanna not mentioning the presence of Mr. Latifi who in his testimony in rebuttal, stated that he had gone to Tis Hazari Court Complex, Delhi with the Testator on 30.10.1985.

66. Not mentioning of Mr. Latifi's presence at the Tis Hazari Court Complex, Delhi has nothing to do with the basic issue about execution and attestation of the Will by two witnesses. The three essential persons were the Testator and the two witnesses. They have been acknowledged to be present there. Two members of the Testator's staff, excluding the driver, have been acknowledged. No suggestion has been put to Mr. P.N. Khanna to the effect that he was in fact not present at Tis Hazari Court Complex, on the said date.

67. Neither in Mr. Khanna's statement nor of any other party, is it recorded that Mr. Latifi had gone in a professional capacity, which would require him to be active in the entire process. He was a Senior Advocate, who in keeping with his designation, kept a certain degree of distance and aloofness from the actual process of execution of the



Will and to its being deposited in a sealed cover with the Registrar. Nothing adverse can be drawn from his statement that: *“I cannot on this point admit or say as to who was present at the time of the signing of the Will by Raja Bahadur Sardar Sahib. I cannot say at what place this Will was signed by him”*.

68. Mr. Latifi was produced by the appellants as PW-3 to bring his rebuttal evidence primarily regarding the evidence of Mr. R.K. Singh’s testimony that he was not associated with the drafting of the Will. Since Mr. Latifi was present at the court only as a personal friend of the Testator, it is not inconceivable that he would have kept an aloof distance apropos the actual execution and presentation of the document as of 30.10.1985. This was expected of the Senior Advocate, who, in any case, was not engaged for the aforesaid purpose. Surely he was not supposed to be a witness to the signing of the Will or to keep a track of all who were present at the time of execution or presentation of the Will. His mere presence at the Tis Hazari Court Complex, Delhi for the Late Raja Bahadur Sardar Sahib cannot be assumed that he was necessarily to witness or corroborate everything what had happened at the site. It can be inferred that the Testator wanted to be doubly sure that the execution of the Will and its presentation deposit before the Registrar went through smoothly, therefore, the executor had both his advisors: legal advisor-Mr. Latifi and financial advisor and C.A.-Mr. P.N. Khanna, present at the time of execution and presentation of the Will to the Registrar of Assurances. Furthermore, aloofness on the said date was also in keeping with the distance an Executor is required to maintain apropos a Will.



69. Therefore, the findings of the impugned order in this regard cannot be sustained.

Duplicate Will cannot be taken as the Original Will:

70. Another objection for not granting probate was that the Will and Testament marked 'Duplicate' cannot be taken to be as Original Will and, therefore, it is not proven in accordance with law.

71. The learned Senior Advocate for the State of Rajasthan submits that the probate proceedings can be sustained only on the basis of the Original Will and not on a copy of the Duplicate Will. What was filed was the latter and not the Original Will. He says that no secondary evidence can be led unless and until foundation is laid as to why the primary evidence is not available. The original not having been produced, the case could not proceed.⁵

72. This argument is misconceived. It could not be the intent of the petitioner to propound the original Duplicate annexed to the probate petition as the Original Will, because the latter was lying enclosed in a sealed cover with the Registrar.

73. The said duplicate was merely produced to submit to the court that a Will with the same content has been deposited in a sealed cover with the Registrar. Doubtless, no certified copy can be produced of a

⁵ *U. Sree vs. U. Srinivasan* AIR 2013 SC 415; *Benga Behera & Anr. Vs. Braja Kishore Nanda & ors.*, 2007 9 SCC 728: "...31. A document upon which a title is based is required to be proved by primary evidence, and secondary evidence may be given under Section 65(c) of the Evidence Act. The said clause of Section 65 provides as under:

"65. (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;"

Loss of the original, therefore, was required to be proved.

32. In a case of this nature, it was obligatory on the part of the first respondent to establish the loss of the original will beyond all reasonable doubt. His testimony in that behalf remained uncorroborated...."



document deposited in a sealed cover with the Registrar. However, the sealed cover as well as the document itself could be produced by the Registrar upon the court calling for it. It is to justify this requirement that the petitioner had produced the Duplicate with the petition. This is reinforced by I.A. No. 7618/1987 moved by the appellant seeking production of the Original Will lying in deposit with the Registrar.

74. As has been noted above, the original Duplicate copy of the Will was produced with the petition and the Will contained in a sealed envelope, which was produced from the office of the Registrar, pursuant to the above order, was opened in the court, seen and then resealed. It was identical to the Will propounded by the appellant. It had been kept secured with the Registrar by the Testator as an exercise in caution and prudence, so that the original would be made available at the appropriate time.

75. The sealed envelope brought from the office of the Registrar does not bear the word 'Duplicate' nor does the Will which came out of it. The latter was the original Will signed by the Testator, sealed and deposited. An identical copy of the same marked 'Duplicate' was executed and handed over to Mr. Danial Latifi, who upon demise of the Testator gave it to Mr. Romesh Thapar for appropriate action. If the original Will had already been kept with the Office of the Registrar, then only an identical counterpart marked 'Duplicate' could have been produced and there could be no suspicion in this regard. The respondent's contention is therefore untenable and is rejected.



Apropos withdrawal of the objections by the Objectors:

76. Some of the objectors included Mr. Surender Singh and Mr. Rajinder Singh, purporting to be the cognates/agnates of the Testator in the Probate Case. During the pendency, they filed applications under Order XXIII Rule 1 CPC seeking withdrawal of their objections, which were duly supported by their affidavits, wherein they admitted and accepted the execution and contents of the same as the last Will and Testament of Late Raja Bahadur Sardar Singh of Khetri. The relevant portion of the affidavit, *inter alia*, reads as under:-

“6. That in view of the aforesaid admission, the applicant-objector is not interest in pursuing the objection petition filed by him in the present probate proceedings on 06.07.87 and the applicant-objector has absolutely no objection in grant of probate/letters of administration as the case may be in favour of the present petitioners-Executors of the probate proceedings.”

77. The impugned order has found it suspicious that all the objectors withdrew their objections and that there were some ‘forces behind the scene’. However, these ‘suspicious forces’ were never specified. It ignored the fact that with the passage of time, parties to a case may have accepted to not pursue the matter or they subsequently concluded that the probate case was truthful. It is not for the court to go about looking for ghosts where none exist. Once the applications seeking unconditional withdrawal were allowed, with no objection from any party, including the State of Rajasthan, to draw adverse inference on the basis thereof would not be sustainable.



Production of Envelope not sufficient:

78. For the first time, in this appeal, the State of Rajasthan had stated that mere production of the cover of the original envelope containing the Will is not sufficient to prove the Will having been executed as per law.

79. The contention, in any event, is misconceived. That the Will has been executed as per law, i.e. as per the requirements of Section 63 of the Succession Act, is something already established by uncontroverted evidence of PW1, PW2, RW7, and even corroborated by the testimony of PW3. The respondent's contention is rejected.

R.K Singh's Testimony:

80. As is apparent, much of the impugned order derives sustenance from the testimony of PW8, Mr. R.K. Singh.

81. Firstly, Mr. R.K. Singh has deposed that he never met the Testator or PW1. This is belied by three pieces of evidence: (i) the testimony of PW1 that Mr. R.K. Singh was present when the Will and the Codicil were respectively executed by the Testator, (ii) the testimony of PW2 to the same effect, and (iii) the testimony of RW7 read with the contents of the Will, and the cover in which it was sealed.

82. The original cover of the envelope clearly records his signatures alongside the signatures of Mr. P.N. Khanna and the Testator. Mr. R.K. Singh had signed the envelope alongside that of Mr. P.N. Khanna and of the Testator and Mr. G.K. Dixit, Registrar. The position of the signatures of Mr. R.K. Singh is only after it was written that it contains Will of Late Raja Sardar Bahadur Singh of Khetri, R/o



5, Sardar Patel Road, New Delhi, who was identified by Mr. P.N. Khanna, S/o Mr. Bharat Ram, r/o 14/15 – Connaught Place, New Delhi and Sh. R.K.Singh, Advocate and then the sealed cover was deposited by the Testator himself on 30.10.1985 before the Registrar, Delhi at Tis Hazari. The signatures of the Testator and Mr. G.K. Dixit, Registrar had been affixed with their designations below the aforesaid text and the signatures of the two witnesses are on the side of the sealed cover.

83. Surely, Mr. R.K.Singh (RW8) could not have signed on the side unless the text was written and signed by or on behalf of the Testator. Furthermore, the Registrar would not have signed it unless the Testator had been identified to him by the witnesses. Each of them are presumed in law, to have been present before the Registrar at the time of the submission of the sealed cover containing the Testator's Will.

84. The record from the Registrar office shows that Mr. R.K. Singh (RW8) was present in the office of the Registrar. He was a lawyer and is expected to have known the document he was signing. His testimony to the contrary becomes more unbelievable when he responds with a "No" to the question "Do you read any paper before signing?"

85. The Will bears the signatures of Mr. R.K. Singh on each of three pages. On each page, the signatures of the Testator had been underlined possibly by the Testator himself and it is only thereafter that Mr. R.K. Singh had signed as the second witness on the document. The document clearly reads as '*the last Will and Testament*' of the Testator. No lawyer would sign a document unless



he was fully aware as to what is written therein. The court finds Mr. R.K. Singh's deposition apropos his signing the document inspires no confidence. The said deposition, *inter alia*, reads as under:

"C.Q. Did you read any paper before signing?"

Ans. No'

I was not aware of the nature of the document what I was signing. I did not make any enquiry as to what was the nature of the document what I was signing. I was asked by Mr. Latifi to go to Sardar Patel Marg and to sign whatever documents I was asked to sign.

C.Q. Did you across your mind that you may be signing a document which will be used against you?"

Ans. No.

86. The testimonies of two witnesses have gone uncontroverted in cross-examination, as regards the execution and deposit of the Will. The testimony of Mr. R.K. Singh, an Advocate with a standing of about 8 years, who was working in the Law Commission of India, Ministry of Law & Justice, Government of India, two years later as an Assistant Officer, and who at the relevant time was working as a Junior Law Officer in the Ministry of Agriculture, Government of India, inspires absolutely no confidence. Since it is inconceivable that an advocate would have signed a document and thereafter also sign the envelope in which the document is sealed, despite not being aware of its contents, or worse, when the contents of the documents are purportedly covered/hidden by another person.

87. The statement that he was associated with the person who



drafted the Will of the Testator and the former had asked him to sign the same, did not entitle him to say that he did not see the Testator signing the document, nor as testified by PW1. A lawyer retains his independence and individuality at all times and is a privileged member of society. It is inconceivable that a lawyer, with an experience of about eight years, would append his signature to documents without knowing what is written in it. The record of the Registrar clearly shows that the three relevant witnesses, one the Testator and two witnesses, namely, Mr. P.N. Khanna (PW1) and Mr. R.K. Singh (RW8) were present before the Registrar. Having established the same, for Mr. R.K. Singh to resile from his signatures in attestation of the Will is unusual to say the least. The only thing that can be inferred is that for reasons best known to Mr. R.K. Singh, who only appeared upon repeated summons being issued to him is that he was a reluctant witness. What occasioned his reluctance is not for the court to dwell upon.

88. Mr. R.K. Singh was a lawyer and had worked with Mr. Latifi, Senior Advocate of the Supreme Court. The latter had raised a bill in 1985-86 of Rs. 1000 for working on a Will. He specifically worked at the Law Commission, and was selected as Junior Law Officer in the Ministry of Agriculture. For a person of his background, it would be expected that he has a fair legal experience and would not sign blindly on papers, all the more if he is to present himself before the Registrar of Assurances.

89. Mr. R.K. Singh's testimony is further suspect because though he deposed that Mr. Latifi did not assign him the drafting of the Will



and that Mr. Latifi did not pay a sum of Rs. 1000/- to him to draft the Will, the same is controverted by the presentation of two documents, i.e. bill of Rs.1,000/- raised by Mr. Latifi upon the Testator apropos Mr. R.K. Singh's assistance, and payment of the said amount to Mr. R.K. Singh by a cheque. The bill raised on the Testator was a contemporaneous document and issued before the death of the Testator. Mr. Latifi had proved that he had paid Mr. R.K. Singh by cheque for the aforesaid work. His testimony, in this regard, reads as under:

".... Q. Did you ask (Mr. R.K. Singh) to help you in drafting the will of Raja of Khetri Raja Sardar Bahadur Singh Sahib?

Ans. Yes. I sought his assistance in drafting as well as in engrossing and in the execution of the will.

Q. When you sent your Bill to Raja of Khetri for the above work did you include the bill of Mr. R.K. Singh, Advocate?

Ans: Yes. I have. The fee charged was about Rs. 1000/- which I paid to Mr. R.K. Singh by cheque. I have brought the counter-foil of my cheque book. It is cheque no. 803827, dated 12th March, 1986 drawn on United Commercial Bank, Supreme Court Compound, New Delhi. I have sent the Bill Ex. RW.8/P-A. It is in my handwriting and bears my signature. Payment was made by Raja of Khetri against this bill. I think Mr. R.K. Singh visited Raja of Khetri in connection with this work. Payment was due to him and he must have visited him in the normal course..."

90. Notably, Mr. Latifi was not cross-examined regarding payment to Mr. R.K. Singh.

91. In the opinion of this Court, Mr. R.K. Singh's testimony is wholly suspect being contrary to all rationale and logic of a reasonable person. In any event, it cannot be the basis for disbelieving



uncontroverted evidence both oral and documentary, by both private as well as official witnesses. Mr. R.K. Singh's testimony cannot controvert matters of record.

92. The impugned order, in our view, has erred in placing undue reliance on the testimony of Mr. R.K. Singh, and in relying on the same to wholly nullify testimonies of PW1, PW2 and more importantly, RW7, all of whose testimonies remain unimpeached in cross-examination.

Suspicious Circumstances:

93. The impugned order has referred to some alleged suspicious circumstances. What are these circumstances are not spelt-out substantially. In *Murthy vs. C. Saradambal (2022) 3 SCC 209*, the Supreme Court has held some illustrations of suspicious circumstances as under:

35. In Bharpur Singh and others v. Shamsher Singh [2009 (3) SCC 687], at Para 23, this court has narrated a few suspicious circumstance, as being illustrative but not exhaustive, in the following manner:-

"23. Suspicious circumstances like the following may be found to be surrounded in the execution of the will:

(i) The signature of the Testator may be very shaky and doubtful or not appear to be his usual signature.

(ii) The condition of the Testator's mind may be very feeble and debilitated at the relevant time.



(iii) *The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.*

(iv) *The dispositions may not appear to be the result of the Testator's free will and mind.*

(v) *The propounder takes a prominent part in the execution of the will.*

(vi) *The Testator used to sign blank papers.*

(vii) *The will did not see the light of the day for long.*

(viii) *Incorrect recitals of essential facts."*

37. *In Naranjan Umeshchandra Joshi v. Mrudula Jyoti Rao [(2006) 13 SCC 433], in Paras 34 to 37, this court has observed as under:-*

"34. There are several circumstances which would have been held to be described by this court as suspicious circumstances:

(i) when a doubt is created in regard to the condition of mind of the Testator despite his signature on the will;

(ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;

(iii) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit...."

94. What constitutes a suspicious circumstance was considered by a Court of Appeal in ***Estate of Lavinia Musgrove (1927) P. 264***. The



case dealt with a Will not being brought to light for nearly 20 years by the Executor, who was also the mother and sole beneficiary under the Will. It was not found to be a suspicious circumstance for the following reasons:

“ ...

the will was placed in the custody of the mother and executrix. There is no suspicion attaching to the will itself, or to its terms. If the will had been produced immediately upon the death of Lavinia in 1905, no exception could have been taken to it.

The suspicion that the judge refers to is a suspicion as to the conduct of Emma Mercy Dunmall and her forbearance to put the will forward. But if the will was once a good will it cannot be disposed of except in one of the authorized weays of revocation: see ss. 18, 19 and 20 of the Wills Act.

...

If it was once a will, and as such was handed over to the custody of the executrix – and no more effective act could b done by a testatrix in support of it- it remains her will, and no mere conduct of the executrix subsequently will stop its effect. The judge was satisfied that Lavinia had entirely forgotten the document. Forgetfulness – even if surprising – may explain the inaction of Emma Mercy Dunmall. To import more into this inaction appears to me to be acting upon a presumption arising from conjecture only.

.... What of the suspicion? It is not such as attaches to the document itself in the sense of



which Sir James Wilde uses the term in Guardhouse v. Blackburn, or as it arose in Tyrrell v. Painton in the preparation of the will. The wide definition of suspicion stated by Lindley L.J. in the latter case, that it “extends to all cases in which circumstances exist which excite the suspicion of the court,” appears to have been used in reference to the preparation of the will, its intrinsic terms, and the circumstances surrounding its preparation and execution, and Davey L.J. seems to have had the same matters in mind. Their judgments were not intended to later, but to affirm the principles laid down in cases I have cited. They do not alter what Lindley L.J. said in Harris v. Knight.

After carefully considering the authorities and following the rules stated in Barry v. Butlin and Guardhouse v. Blackburn, I am of opinion that the plaintiff is entitled to have the maxim applied in favour of this document, complete in form, unexceptional in purpose, about which no suspicion can be aroused until a later date, and that not attaching to the will, or to the testatrix, but to the executrix.

It is a suspicion that there must have been some condition subsequent, under which a valid testamentary document ceased to be effective. The onus of proof of this would appear to lie on the opponent of the grant of probate, for once the will has been proved to have been duly executed, the burden of proving that it was revoked lies on those who set up the revocation, and in the absence of evidence proving it, revocation will not be presumed. That is laid down by Lord Penzance in Benson v. Benson.

...



Now there is nothing in the preparation or contents of the will to raise a suspicion that it did not express the mind of the testatrix. The sole peculiarity is the subsequent fact that for many years after knowledge of the death of the testatrix the executrix did not take any steps to prove a will which have large benefits to her daughters. I cannot think that this fact is analogous to the facts in Tyrrell v. Painton or the previous similar cases, or that it justifies such an inference as was drawn there.

The learned judge in attributing the inaction of the executrix to knowledge of some defeat in the document was, in my judgment, conjecturing only....”

95. The plausibility of Mr. Parmeshwar Prashad manipulating the Testator is highly unlikely if not implausible because the latter had been a Member of the Constituent Assembly, had assisted in the drafting of the Indian Constitution, had been a Member of Parliament, had been a diplomat as India's Ambassador to Laos, was well educated, and had the benefit of advice and assistance of Senior legal professional and a leading Chartered Accountant, the latter was also Director of the Reserve Bank of India and on the board of many other business and charitable organizations, has already been discussed hereinabove. It does not create any suspicious circumstance. It has also been noted above that the non-assigning of reasons by the objectors to withdraw their objections cannot constitute a suspicious circumstance because prudence, good sense and truth can dawn upon an individual at any time. Indeed, sometimes, with passage of time, things appear in an altered perspective and it is possible that the



objectors found good reason not to pursue their objections to the probate petition. It is not for the court to examine as to what the reasons were.

96. The non-examination of Mr. Gokul Anand did not create a suspicious circumstance. As noted hereinabove, the objectors had sought to summon Mr. Gokul Anand as a witness, their request was allowed by the learned Trial court but was set aside by the Division Bench in an appeal preferred by the appellants. This conclusively shows that the non-examination of Mr. Gokul Anand could not be the basis of any adverse inference or be deemed to be a suspicious circumstance. Reference to Mr. Gokul Anand is, therefore, unnecessary and of no consequence. Notably the objectors had not mentioned Mr. Gokul Anand in the list of witnesses on 24.09.1988. It is only after the evidence of the appellant had been completed that Mr. Gokul Anand was sought to be examined. The objector's application was rightly rejected by the Division Bench.

Conclusion:

97. What emanates from the preceding discussion is that a Will was executed at Tis Hazari on 13.10.1985 by the Testator in the presence of two attesting witnesses, Mr. P.N. Khanna and Mr. R.K. Singh. Thus, compliance with Section 63 of the Succession Act is proved. The said document was sealed in an envelope and presented to the Registrar with the endorsement on it that it contained the last Will and Testament of the Testator who had been identified by Mr. P.N. Khanna and Mr. R.K. Singh. The said envelope also bore the



signatures of the Testator as well as the Registrar. This is a clear declaration that the envelope contained the said document and the Testator has been identified to the Registrar by two witnesses. This also ensures compliance with Section 68 of Evidence Act in proving the Will. When the original Will was opened and seen, it also bore the signatures of the Testator as well as the aforementioned two witnesses on each of the three pages of the Will. Mr. P.N. Khanna's testimony apropos the execution of the Will in his presence as well as in the presence of Mr. R.K. Singh at Tis Hazari Court Complex, Delhi has gone un rebutted. As regards Mr. R.K. Singh, there is a presumption that he was present at the Office of the Registrar and had witnessed the entire process of the said execution, and had also identified the Testator of the Will before the Registrar and in testimony thereof had signed on the sealed envelope, which was then deposited with the Registrar.

98. His testimony regarding not receiving money from Mr. Latifi too stands rebutted by Mr. Latifi's testimony and the documents produced by him. The payment in favour of Mr. R.K. Singh had been recorded in the counter-foil of the cheque book brought to the court by Mr. Latifi in his cross-examination.

99. As has been noted hereinabove, the substratum of refusing probate cannot be the testimony of an unreliable witness, viz Mr. R.K. Singh. In any event, once compliance with the requirements of Section 63 of Succession Act is proven, and the proof of the Will and Codicil is in terms of Section 68 of the Evidence Act, there is no bar to this court allowing Test Cas. No. 26/1987.



100. From the preceding discussion, it is clearly established that the Will was executed by Late Raja Bahadur Sardar Sahib and it stands duly proven. In the circumstances, the impugned order is set aside and probate is granted to Lord Northbrook. FAO(OS) 348/2012 is allowed and disposed-off in the above terms.

101. In view of the above, FAO(OS) 347/2012 and FAO(OS) 211/2013 are infructuous and are disposed-off accordingly.

102. In the circumstances, parties shall bear their own costs.

NAJMI WAZIRI, J.

VIKAS MAHAJAN, J.

JULY 11, 2023
KK/SB



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