

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

FAO 415/2011

Reserved on : 01.03.2023

Date of Decision : 06.04.2023

IN THE MATTER OF:

HARJEET KAUR & ANR

..... Appellants

Through: Mr. Manish Batra, Advocate

Versus

STATE & ORS

..... Respondents

Through: Mr. Rajat Aneja and Ms. Chandrika
Gupta, Advocates for respondent No.2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of the present appeal filed under Section 384 of the Indian Succession Act, 1925 (hereinafter, referred to as the 'Act'), the appellants seek setting aside of judgment dated 22.07.2011 passed by the learned Additional District Judge-II, Rohini Courts, Delhi in Probate Case No. 21/2009, whereby petition of respondent No.2/S. Baldev Singh was allowed and letter of administration with respect to Will dated 10.11.1998 granted in his favor.

2. The parties to the present appeal have their common ancestor in *Late S. Harbans Singh* who was the perpetual lessee of property bearing

plot No. 164 (land area measuring 60 sq. mtrs.), Pocket-22, Sector-24, MIG Category, Rohini, Delhi (hereinafter, referred to as the 'subject property').

3. For the sake of convenience, details of the family members of *Late S. Harbans Singh* and his wife/*Smt. Harjeet Kaur*/appellant No.1 are reproduced hereunder:-

<i>Late Sh. S. Harbans Singh – Late Smt. Harjeet Kaur</i>	
<i>S. Baldev Singh</i>	Son
<i>S. Surender Singh</i>	Son
<i>Smt. Inderjit Kaur</i>	Daughter
<i>Smt. Rajinder Kaur</i>	Daughter
<i>Smt. Surjeet Kaur</i>	Daughter
<i>Smt. Saravjeet Kaur</i>	Daughter
<i>Harpinder Singh</i>	Son (deceased) (expired on 24.04.1989)

4. *Late S. Harbans Singh* (hereinafter, referred to as the 'testator') executed a Will on 10.11.1998. The Will was duly registered in the office of Sub-Registrar-II, Janakpuri, Delhi on 10.11.1998 in the presence of two attesting witnesses namely, *Sardar Hardev Singh* and *Sh. J.B. Malik*, Advocate. By way of the said Will, the testator bequeathed the subject property in favour of *S. Baldev Singh* (respondent No.2), who propounded it by way of filing the underlying probate case.

5. During the pendency of the proceedings before the Trial Court, a public notice was given by publishing the citation in the newspaper "*The Statesman*" on 11.08.2009 and it was also affixed on the notice board of the Court on 02.07.2009. The appellants, i.e. wife and son of the testator, were the only objectors, as the other legal heirs (the daughters of the testator), gave no-objection in favour of respondent No.2. The third son i.e., *S. Harpinder Singh* had already predeceased the testator on 24.04.1989, having died issueless, and his widow having remarried.

6. The Trial Court framed the following issues:-

"i. Whether the deceased Sardar Harbans Singh executed a valid and enforceable Will? OPP

ii. Whether plaintiff is entitled for Will Probate as claimed? OPP

iii. Relief, if any?

iv. Whether the petition is barred by limitation? OPR"

7. To prove his case, the propounder examined himself (*PW-3*), one of the attesting witnesses to the Will namely, *S. Hardev Singh (PW-2)*, and *Sh. Chitranjan, LDC (PW-1)* from the Office of Sub-Registrar.

8. In turn, the appellants, besides examining themselves, examined one *Sh. Rahul Massey*, the Medical Record Executive from *Moolchand Hospital, Lajpat Nagar, Delhi* who produced the medical records of the testator. Additionally, the appellants examined one *Smt. Gurmeet Kaur*, i.e. wife of appellant No.2 (*RW-3*).

9. Eventually, vide the impugned judgment, a letter of administration was granted in favour of respondent No.2. Aggrieved with the same, the appellants preferred the present appeal.

10. During the pendency of the present appeal, appellant No.1 had expired. Her legal heirs were already on record, being the remaining parties. The appeal continued to be contested by appellant No.2 (hereinafter, the '*appellant*').

11. Learned counsel for the appellant contended that the execution of the alleged Will is surrounded by suspicious circumstances, inasmuch as the testator was not in a fit state of mind at the time of execution of the Will. In this regard, reference was made to the testator's past medical records to submit that he had suffered an accident in the year 1991 because of which he went in coma. In support of the aforesaid submission, learned counsel further placed reliance on the testimony of not only *Late Smt. Harjeet Kaur*, but also of respondent No.2.

Appellant also doubted the testimony of attesting witness-S. *Hardev Singh* as, though he claimed to be a close friend of the testator for more than 40 years, he denied knowledge of the testator having an accident or being admitted in hospital for 1-2 months. Doubts were also raised on the testimony of respondent No.2 by contending that in the cross-examination he had admitted not having any knowledge of the testator's accident or the testator going into coma.

12. Appellant next contended that the alleged Will neither provided any reason for the exclusion of the testator's wife and other children from his estate. It was also contended that the propounder failed to implead widow of *Late S. Harpinder Singh* as she also would have vested rights in the subject property. Lastly, it was contended that although the testator had expired on 28.09.2001, the probate case came to be filed only in the year 2009 and as such, it ought to have been dismissed on the ground of

limitation. Another contention was raised to the effect that the propounder has sought to get the property mutated in his name and in those proceedings, he has forged the NOC of the appellants.

13. In support of his submissions, learned counsel for the appellant placed reliance on the decisions in State of Haryana v. Harnam Singh (Dead) through Legal Representatives and Others reported as (2022) 2 SCC 238 and Kavita Kanwar v. Pamela Mehta and Others reported as (2021) 11 SCC 209.

14. Learned counsel for respondent No.2 repelled the contentions by drawing attention to the testimony of *Late Smt. Harjeet Kaur* where it has come that though the testator had suffered an accident in the year 1991, he fully recovered, as he was not only going to the bank for operating his accounts but also operated the chit fund. It was also submitted that there are no medical documents on record to show that the testator was ever treated or admitted in a hospital between the year 1991 and the execution of the Will on 10.11.1998. While answering the contention regarding the exclusion of the appellant in the Will, learned counsel referred to the testimony of *Late Smt. Harjeet Kaur* where it has been stated that the appellant was already owning a property in *Khyala*. It was submitted that the said circumstance along with the fact that respondent No.2 had fallen sick and suffered a paralytic stroke, had weighed in the mind of testator.

On the aspect of non-impleading the widow of *Late S. Harpinder Singh*, reference was again made to the testimony of *Late Smt. Harjeet Kaur* to submit that *Late S. Harpinder Singh* had predeceased the testator. It was further submitted that his wife got re-married within three

months of his death and her whereabouts are not known. Further, reliance was placed on Section 21 of the Hindu Succession Act, which remained in force till 09.09.2005, to contend that when the succession opened up in the year 2001 on the death of the Testator, the widow late *Late S. Harpinder Singh*, having already re-married was divested of her rights.

15. In support of the submissions, learned counsel for respondent No.2 placed reliance on the decisions in H. Venkatachalan Iyengar v. B.N. Thimmajamma and Ors. reported as **AIR 1959 SC 443**, Shashi Kumar Banerjee & Ors. v. Subodh Kumar Banerjee Since Deceased & After Him His Legal Representatives & Ors. reported as **AIR 1964 SC 529**, K.L. Malhotra v. Sudershan Kumari & Ors. reported as **149 (2008) Delhi Law Times 783**, Prem Singh & Ors. v. Birbal & Ors. reported as **(2006) 5 SCC 353**, Prem Bhatnagar v. Shri Ravi Mohan Bhatnagar & Ors. reported as **AIR 2013 Delhi 20**, Nirmala Handa v. Krishna Kaura reported as **MANU/DE/3040/2014** and Velamuri Venkata Sivaprasad (D) By Lrs. V. Kothuri Venkateswarlu (D) By Lrs. Ors. reported as **MANU/SC/0740/1999**.

16. Having heard learned counsels for the parties and gone through the material placed on record, I find no merit in the appeal for the reasons stated hereinafter.

17. Pithily put, while scrutinising execution of a Will, a rational approach is required to be adopted by the Court. The Court must satisfy its conscience before passing any order granting probate, as existence of suspicious circumstances significantly impacts the propounder's case. In this regard, the Supreme Court in Anil Kak v. Kumari Sharada Raje and Others reported as **(2008) 7 SCC 695** has opined as under:

“52. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/or letters of administration with a copy of the will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.

53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.

54. It may be true that deprivation of a due share by (sic to) the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a will.

55. Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation.”

18. Later, in Leela Rajagopal and Others v. Kamala Menon Cocharan and Others reported as (2014) 15 SCC 570, the Supreme Court further opined as under:

“13. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to

its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us.”

19. Recently, while traversing the law and referring to Bharpur Singh and Others v. Shamsheer Singh reported as (2009) 3 SCC 687, the Supreme Court in Murthy and Others v. C. Saradambal and Others reported as (2022) 3 SCC 209 reiterated a few suspicious circumstances as being illustrative, but not exhaustive, in the following manner:

“35. ... “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.”

20. Pertinently, the propounder in order to prove his case, examined one of the attesting witnesses. The relevant statutory provision i.e., Section 68 of the Indian Evidence Act, 1972 reads thus:

“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.”

21. Needless to state, a Will has to be proved like any other document, subject to the special requirements of attestation provided in Section 63 of the Act. The test to be applied would be the test of satisfaction of a prudent mind. What is required to be seen is whether the propounder of the Will has produced satisfactory evidence that the Will was signed by the testator who, at the relevant time, was in a sound and disposing state of mind; understood the nature and effect of the disposition and had put his thumb impression of his own free will.

22. In this regard, the Supreme Court in H. Venkatachala Iyengar v. B.N. Thimmajamma and Others reported as **1959 Supp (1) SCR 426**, held as under:-

“18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party

propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case

of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

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."

23. In Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao and Others reported as **(2006) 13 SCC 433**, while explaining the mode and manner in which execution of an unprivileged Will is to be proved, the Supreme Court held as under:-

"32. Section 63 of the Succession Act lays down the mode and manner of execution of an unprivileged will. Section 68 of the Evidence Act postulates the mode and manner of proof of execution of document which is required by law to be attested. It in unequivocal terms states that execution of will must be proved at least by one attesting witness, if an

attesting witness is alive subject to the process of the court and capable of giving evidence. A will is to prove what is loosely called as primary evidence, except where proof is permitted by leading secondary evidence. Unlike other documents, proof of execution of any other document under the Act would not be sufficient as in terms of Section 68 of the Evidence Act, execution must be proved at least by one of the attesting witnesses. While making attestation, there must be an animus attestandi, on the part of the attesting witness, meaning thereby, he must intend to attest and extrinsic evidence on this point is receivable.

33. The burden of proof that the will has been validly executed and is a genuine document is on the propounder. The propounder is also required to prove that the testator has signed the will and that he had put his signature out of his own free will having a sound disposition of mind and understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But, the onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any. In the case of proof of will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. (See Madhukar D. Shende v. Tarabai Aba Shedage and Sridevi v. Jayaraja Shetty.) Subject to above, proof of a will does not ordinarily differ from that of proving any other document."

24. In the present case, the appellant, while drawing attention to the testimony of *Late Smt. Harjeet Kaur* has referred to the instance of testator suffering an accident and going into coma as a suspicious circumstance. In this regard, suffice it to note that on a plain reading of the testimony of *Late Smt. Harjeet Kaur* it appears that though she had stated that the testator was the owner of the subject property (having purchased it from his own funds), it was also stated that after the

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accident, the testator was never admitted in any hospital. Although in her deposition, *Late Smt. Harjeet Kaur* stated that after the accident, the testator was not in a fit state of mind, it is also evident from other points in the deposition that she had stated that after the accident, the testator was behaving properly and only sometimes he was erratic. She also stated that the testator was operating both the bank accounts on his own and after the accident one of the family members used to accompany him.

25. At this stage, it is deemed expedient to refer to the statement of the appellant where he also admitted the suggestion that his father himself was operating both his accounts till his death. Even during the hearing, the Court had put a query to the learned counsel for the appellant if any medical records were placed on the record which show as to whether the testator was ever treated or admitted in any hospital after the year 1991. The answer was in the negative.

26. Notably, on the other hand, all the four daughters of the testator have filed their affidavits stating that at the time of execution of the Will, the testator was of sound health and disposing mind. It was further stated that the Will was executed by the testator without any undue pressure or coercion by anyone. They gave their no-objection in respect of grant of probate in favour of respondent No.2 and were not even cross-examined.

27. Besides, the testimony of attesting witness-*S. Hardev Singh* would also show that he testified to the fact that the testator had executed the Will in his presence. He identified his signatures as well as signatures of the testator on the Will. He deposed that the Will was produced before

the Sub-Registrar for registration in his presence. The Will was also signed on the backside by him at point B2 to B2. He also identified his thumb impression at point B3 to B3 before the Sub-Registrar as well as those of the second attesting witness-*Sh. J.B. Malik*.

Pertinently, *S. Hardev Singh* stated that at the time of the execution, the testator was in a fit state of mind and walking with assistance. Although, the appellant has raised a doubt as to the testimony of attesting witness-S. Hardev Singh by stating that he had shown lack of knowledge of the testator's accident/state of coma in the year 1991, in the opinion of this Court that would not create any dent on the testimony.

28. As such, in the absence of any satisfactory explanation given by the appellant, or medical documents, and further in light of the above noted testimonies, the contention that the testator's accident in the year 1991 implied that he was not in a fit state of mind at the time of execution of the Will in the year 1998 is farfetched and has no merit in it.

29. Coming to the next contention that the testator had not given any reason for exclusion of other legal heirs, it is observed that in the testimony of *Late Smt. Harjeet Kaur* as well as the appellant, it has come that the appellant was the owner of another plot in *Khyala*. Accordingly, I find merit in the submission of the learned counsel for respondent No.2 that the same would have weighed in mind of the testator while excluding the appellant from his estate.

30. The contention for non-impleading the wife of *Late S. Harpinder Singh* is also of no avail to the appellant. As noted hereinabove, *Late S. Harpinder Singh* had predeceased the testator way back on 24.04.1989. It has come in the testimonies of parties that after *Late S. Harpinder Singh*

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had expired, his wife got remarried and her whereabouts were not known to anyone. Even otherwise, a public notice was issued in furtherance of the petition of respondent No.2, to which no objection was filed by any member of the public, besides the appellant and *Late Smt. Harjeet Kaur*. The reliance placed by the appellant on the decision in Harnam Singh (Supra) and Kavita Kanwar (Supra) is also found misplaced. While in the former, the testimony of scribe of the Will and the two attesting witnesses was disbelieved and, in the latter, the suspicious circumstances were opined to be unexplained. The same is not the case in the present appeal and hence, the appellant's reliance on the aforesaid decisions is of no avail to him.

31. Accordingly, for the reasons stated hereinabove, I find that none of the circumstances pointed out by the learned counsel for the appellant create any doubt on the genuineness and due execution of the Will. No ground is made out to entertain the present appeal. The impugned order is upheld and the appeal stands dismissed.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 06, 2023

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