



2024:DHC:1850-DB

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

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Judgment delivered on: 06.03.2024

+ **FAO(OS) 110/2019****RAJ BALA AND ORS.**

..... Appellants

versus

STATE (NCT) OF DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellants : Mr Nitin Bharadwaj, Mr Vikas Parasher and
Mr Deepak Bashta, Advocates.

For the Respondents : Mr Mandeep Singh Vinaik with Ms Anjali
Sharma, Ms Ragini Vinaik, Mr S.K. Sagar,
Ms Kanishka Sharma and Ms Thanglunkim,
Advocates.

CORAM**HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT****VIBHU BAKHRU, J**

1. The original appellants are the legal heirs of late Sh. Inder Singh (hereafter *the Testator*). Appellant no.1 (Raj Bala) is the wife of the deceased and the original appellants no.2 and 3 are his sons. The original appellant no.3 expired during the pendency of the present appeal and his legal heirs were impleaded.



2. The appellants have filed the present appeal, impugning a judgment and final order dated 13.05.2019 (hereafter *the impugned judgment*) whereby, the learned Single Judge of this Court had allowed the petition captioned *Jai Singh v. State* in *TEST. CAS. 2 OBJ/2003*, filed by respondent no.2, for grant of probate of the Will of late Sh. Inder Singh dated 10.03.1995 (hereafter *the Will*).

3. In terms of the Will, the Testator bequeathed land measuring 91 kanals 4 marlas at Village Raisina, District Sohna, bearing Khasra No.99/22/2 (1-16), 102/1 (7-15), 2(8-0), 3(2-16), 6(2-2), 7(4-13), 8(7-15), 9(8-0), 10(8-0), 11(8-0), 12(6-18), 13(8-0), 14(8), 15(8-0), 26(1-20), 101/1/1 (0-3), 10/2 (0-4) (hereafter *the Raisina land*) in favour of respondent no.2 (hereafter *the Propounder*), his eldest brother. Apart from the said bequest, the Will does not mention any other assets or properties of the Testator. The appellants had objected to the grant of probate of the Will or the letters of Administration, to the Propounder on several grounds including that the signature of the Testator was forged; the Will was not registered; the facts as mentioned in the Will were incorrect; and the bequest was not natural as it excluded the Testator's natural heirs; the Will was not in the knowledge of the Testator's immediate family members; the attesting witnesses were connected with the beneficiary, (the Propounder); and there were suspicious circumstances indicating that the Will was not executed by the Testator.



4. The learned Single Judge had rejected the objections as raised and had granted probate of the Will. This has led the appellants to file the present appeal.

THE WILL

5. The Will was purportedly executed on 10.03.1995. The recitals in the Will purport to provide the backdrop in which the Will was executed in favour of the Propounder. Whilst, the Propounder seeks to justify the execution of the Will in his favour, the appellants dispute the same. The Will is set out below:

“WILL

“This is the last Will of me, Inder Singh, S/o Late Shri Risal Singh made on this 10th day of March, 1995. I state that this is my last Will with respect to the subject property and any other Will, codicil and documents of testamentary nature pertaining to the agricultural land at Village Raisina, District Sohna, Haryana, stands cancelled and revoked. I am executing this Will free of any fear or favour, and without any undue influence or pressure.

I am the youngest child of Late Shri Risal Singh. I have two elder brothers Shri Jai Singh and Shri Sher Singh. I also have three sisters who are elder to me. Unfortunately, owing to handicap suffered by me at an early age I was not able to complete my studies and have studied only upto Class V. My eldest brother Shri Jai Singh has, all along, been playing the role of my mentor and guide. Not being in a position to earn a living for myself, he has supported me throughout my life.

In 1977, my brother arranged to have truck no. DLL 8121 transferred to my name. I was also engaged to supervise the brick kiln run by Shri Jai Singh at Shahurpura.



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In the year 1981, Shri Jai Singh purchased land measuring 52 karnals, 17 marlas, at Village Ghasola, out of his own resources, in my name.

In the months of January, and March, 1982, Shri Jai Singh purchased a total of 91 kanals and 4 marlas of land in my name in Village, Raisina, District Sohna from his own resources but the same was purchased in my name.

In the year 1991, the Ghasola land was sold by me with the consent of Shri Jai Singh and using the proceeds of the same, I purchased about 14 acres of land at Kundal, District Sonapat, Haryana in mine and my wife's name. However, it had always been the understanding in the family that the land at Raisina would always belong to Shri Jai Singh, and I would arrange to have the same transmitted back to him.

In the year 1991, some litigation commenced between my brothers which pertained to a family dispute about property. The same was pending in the court of the Civil Judge, at Delhi.

In 1993, our father died. In the year 1994, we had a settlement within the family and the same was recorded by means of a consent decree passed by the court of Shri R.S. Arya, Civil Judge, Delhi. While the said settlement recorded the arrangement between the three brothers as to other properties, the land at Raisina Village was left out of the same since it had always been the understanding that the same would revert back to Jai Singh.

The present Will pertains to agricultural land at Raisina Village District Sohna, described above. I am grateful to Shri Jai Singh for having provided for me and my family in this manner and for securing the future of my children. However, I want to honour my promise to my eldest brother by ensuring that the land at Raisina Village goes back to the person who purchased it in the first place. In fact this was the intention of all concerned when the settlement was arrived at within the family.



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AND NOW THEREFORE I HEREBY bequeath land measuring 91 kanals 4 marlas at Village Raisina District Sohna, bearing Khasra No. 99/22/2 (1-16), 102/1 (7-15), 2(8-0), 3(2-16), 6(2-2), 7(4-13), 8(7-15), 9(8-0), 10(8-0), 11(8-0), 12(6-18), 13(8-0), 14(8-0), 15(8-0), 26(1-2), 101/1/1(0-3), 10/2(0-4) in favour of my eldest brother Shri Jai Singh, Son of Late Shri Risal Singh, Resident of J-171, Saket, New Delhi. After my death the said land shall vest exclusively with Shri Jai Singh and no other person shall have any right, title or interest over the same. In the event of Shri Jai Singh predeceasing me the land shall go to his wife, Smt. Bijendri.

By means of this Will I wish to call upon my wife and children to honour my wishes after my death and to ensure that the terms of this Will are given effect to.

All my other property shall vest in my legal heirs in accordance with law.

I am executing this Will in the presence of two witnesses Shri Ankur Walia and Shri Kamal Singh who are attesting this Will in my presence.

Sd/-
TESTATOR
(INDER SINGH)

We, the abovenamed attesting witnesses do hereby certify that the Testator Shri Inder Singh has executed this Will in our presence in a state of good health and being possessed of his mental faculties and a sound disposing mind. We have attested the Will in his presence.

WITNESSES:-

1. Sd/-
2. Sd/-"

TEST.CAS.2 OBJ/2003



6. The Testator expired on 10.07.1999 at the age of 38 years. At the material time, he was survived by his wife and his two sons (the appellants), who were minors at that time. On 29.04.2003, the Propounder (Sh. Jai Singh) filed the petition [*Jai Singh v. State* bearing *PROBATE CASE NO. (OBJ.) 2/2003*] under Section 276 of the Indian Succession Act, 1925 for the grant of probate of the Will or letters of Administration, valuing the Raisina land at approximately ₹ 21,00,000/ (hereafter *the probate petition*).

7. On 27.05.2003, the Court issued notice to the relatives of the deceased, and directed that citations be published in the daily “Stateman”. Additionally, the notice was issued to the Chief Controlling Revenue Authority for submitting the valuation report in respect of the Raisina land. Despite the opportunity, the appellants did not file objections or the documents. Consequently, by an order dated 04.05.2004, their right was closed. The Propounder had also not placed the original documents. On 23.05.2005, directions were issued by the Court for filing of affidavit by the Propounder and his attesting witnesses. The said affidavits were filed belatedly – the affidavit of one of the attesting witness (Mr Ankur Walia) was filed on 05.09.2005. The affidavit of second attesting witness (Mr Kamal Singh) was filed on 07.09.2005. The appellants filed their objections to the petition.

8. On 19.07.2006, the learned Single Judge framed the following issues:



- “i) Whether the deceased executed a will dated 10th March 1995?
- ii) If issue no.1 is proved in the affirmative, whether the will in question is a valid will in the eyes of law?”

9. The Propounder submitted his evidence by way of an affidavit dated 20.01.2007, which was adopted as his examination-in-chief. He was not cross-examined at the initial stage as none was present on behalf of the objectors (the original appellants) at the given date. Subsequently, pursuant to an application moved by the objectors, the Propounder (PW-1) was recalled and was cross-examined. The attesting witnesses, Mr Ankur Walia and Mr Kamal Singh also furnished their affidavits of evidence. The learned counsel for the objectors requested that they be cross-examined on the same date. However, despite opportunities, the Propounder could not produce Mr Kamal Singh and stated that he was not traceable. Consequently, Mr Ankur Walia (PW-2) was cross-examined.

10. Appellant no.2 also submitted his affidavit of evidence and was examined as OW-1. The objectors also examined Sh. Raj Kumar (son of the sister of the Testator) as OW-2.

11. The probate petition was allowed by the impugned judgment.

IMPUGNED JUDGMENT

12. The learned Single Judge noted that the contents of the Will provided a detailed background as to why the Raisina land was



bequeathed to the Propounder. The Court held that the Will was not fabricated. The learned Single Judge also did not accept that the signature on the Will was forged and noted that the attempts to challenge the same were feeble as the objectors (appellants) had not sought forensic examination of the Will. The learned Single Judge relied upon the testimony of PW-1 (the Propounder) and accepted that the Will was executed by the Testator as a gesture to gift the Raisina land to the Propounder. The learned Single Judge also accepted the testimony of the attesting witness.

13. The learned Single Judge rejected the contention that the presence of the Propounder at the time of executing of the Will gave rise to any suspicion regarding execution of the Will. The Court accepted the testimony that the Propounder was running the family business and the Testator was not involved in the same.

14. The learned Single Judge did not accept that there was anything suspicious in the Testator bequeathing the Raisina land to his elder brother (the Propounder).

15. The Court further referred to the decision of the Division Bench of this Court in *Prem Nath Chopra v. Arun Chopra: RFA(OS)(OS) 13/2014*, decided on 26.02.2014 and held that the wishes of the Testator were required to be respected.

SUBMISSIONS

16. The learned counsel appearing for the appellants assailed the impugned judgment on several fronts. First, he submitted that the



signature appearing on the Will was clearly forged and a bare comparison of the signatures appearing on the Will and that appearing on the Memorandum of Family Arrangement dated 05.01.1998 produced by the Propounder, clearly indicate that the signatures are not similar. Next, he read the affidavit of the Propounder and his testimony in cross-examination and pointed out that the stand of the Propounder (PW-1) as to the reasons why he was bequeathed the Raisina land, were not consistent. Thirdly, he submitted that the reliance on the contents of the Will was clearly misplaced as the Will had been fabricated at the instance of the Propounder. The Propounder was also present when the Will was allegedly executed. He submitted that there were no special facts stated in the Will, which were not known to the Propounder. Therefore, mentioning some facts, which were not accurate, did not in any manner establish that the Will was genuine. He also submitted that although the learned Single Judge had accepted that the Raisina land was purchased by the Propounder, there was no material on record to establish the same. He submitted that there was no occasion for the Testator to bequeath the Raisina land to his elder brother and deny the same to his widow and his minor children.

17. Mr Vinayak, learned counsel who appeared for the respondents contended that the Raisina land was in effect purchased by the Propounder in the name of the Testator. Therefore, it was their understanding that it would be bequeathed to him. He submitted that there were no suspicious circumstances surrounding the execution of the Will and therefore, the same could not be questioned on that ground.



He contended that the attesting witnesses were examined and had affirmed that the Will was signed by the Testator and the other attesting witnesses in his presence. He also earnestly contended that in the event the appellants desired to question the signature of the Testator as forged, it was incumbent upon them to at least seek a forensic examination. He referred to Section 114 of the Indian Evidence Act, 1872 and drew the attention to illustration 'g'. He submitted that if evidence that could be produced was not produced, it ought to be presumed that it is adverse to the party who withholds it. He contended that in the present case, the appellants had not sought forensic examination of the signatures of the deceased. Therefore, it must be presumed that result of such forensic examination would be adverse to their case. He also contended that the Propounder took care and supported the Testator and it was out of the natural love and affection that the Testator had bequeathed the Raisina land to the Propounder. He also contended that the original documents of the Raisina land were in possession of the Propounder.

REASONS AND CONCLUSION

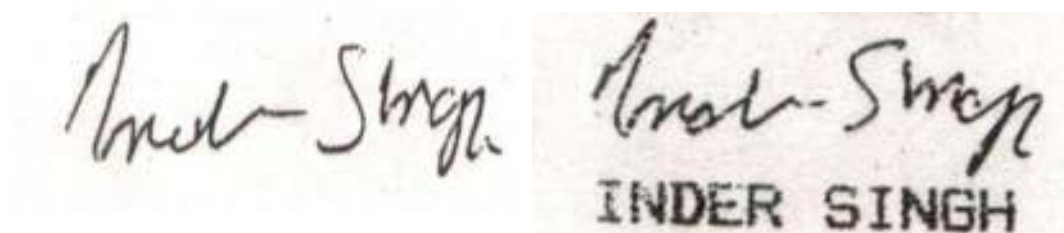
18. The first and foremost aspect to be examined is whether there is any doubt as to the signature of the Testator on the Will. It is material to note that the alleged signatures of the Testator appear on the last page of the Will, which is inscribed over three pages. It does not appear on any of the other pages. The Will is also not registered.

19. Appellant no.2 (Mr. Vikas Dagar), one of the sons of the Testator, had tendered an affidavit in evidence alleging that the Will was forged



in connivance with Mr. Kamal Singh, who was the clerk of the Propounder's counsel, and Mr. Ankur Walia (PW-2), who was the classmate of the son of the Propounder. He was cross-examined and was pointedly asked as to how he could state that the signature of his father was forged. He had responded by stating that the Will does not bear the signature of his father (the Testator).

20. He was shown the Memorandum of Family Settlement dated 08.09.1993 (Ex.PW1/B) and he identified the signatures of his father on the said document. In addition, the Propounder had produced a Memorandum of Family Arrangement dated 05.01.1998, which admittedly was signed by the Testator. The signatures of the Testator on the Memorandum of Family Settlement dated 08.09.1993 does indicate that the signatures are not matured or identical. However, the signatures on the Memorandum of Family Arrangement dated 05.01.1998 are consistent. The Images of the same are reproduced below:



21. The image of the signature of the Testator appearing on the Will is set out below:



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Inder Singh
TESTATOR
(INDER SINGH)

22. There are minor variations in the signatures of the Testator as appearing on the Memorandum of Family Arrangements and Will. In particular, the loop of the letter 'g' appears to be different; the letter 'h' in the surname of the Testator 'Singh' is different. The letter 'r' in the first name of the Testator ends with a wave, which is absent in the Testator's signature on the Will. It also appears that his signature on the Will is laboured.

23. Mr. Vinaik, learned counsel appearing for respondent no.2 (the Propounder) contended that the variations in the signatures are largely on account of the time gap between the execution of the Memorandum of Family Arrangement and the Will. He also submitted that since the appellant's had not led the forensic evidence in respect of establishing that the signature of the Testator was forged, no such contention could be accepted. The said contentions are not persuasive. The time gap between entering into the Memorandum of Family Arrangement dated 05.01.1998 and the Will allegedly executed on 10.03.1995 is less than three years. It is also important to note that the Testator was not of an advanced age. He was about 34 years old when he allegedly executed the Will and was 37 years old at the time of the execution of the Memorandum of Family Arrangement dated 05.01.1998.



24. It is well settled that a Court can even in absence of expert evidence examine the disputed signatures/writings. In ***Murari Lal S/O Ram Singh v. State Of Madhya Pradesh: (1980) 1 SCC 704***, the Supreme Court had observed that “*Section 73 of the Evidence Act expressly enables the Court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which judge and litigant must expose themselves whenever it becomes necessary.*” Thus, the contention that in absence of any expert evidence, the signature on the Will could not be examined, is unmerited. The Court is not precluded from examining the disputed signature on the Will.

25. Having stated the above, it is also necessary to note that the appellants *are* also not sure whether the signature of the Testator is not genuine. The thrust of the appellants’ challenge is largely on the basis that the Will is ‘fabricated and forged’. This contention is mainly premised on the basis that there are suspicious circumstances surrounding the execution of the Will.

26. The attesting witness (PW-2) had *affirmed* that the Testator and the second attesting witness had signed in his presence. PW-2 had reiterated the same in his cross-examination as well. Thus, notwithstanding the appellants’ contention that the signatures are forged, the challenge to the Will would necessarily have to be examined



on the basis whether there are any suspicious circumstances surrounding the execution of the Will.

27. According to the appellants, there are suspicious circumstances surrounding the execution of the Will for the following reasons: (i) that there is no mention of the name of the person, who has inscribed or drafted the Will; (ii) The Will does not bear the signatures on each page; (iii) the attesting witnesses are related to the Propounder – one being the clerk of the counsel of the Propounder and the second being the classmate of the Propounder's son; (iv) that the Will contains extraneous and baseless statements to the effect that the Propounder had played the role of a mentor and a guide and had engaged the Testator in operating a brick kiln run by the family firm known as "Chaudhary Bhatta"; (v) that it falsely records that the land measuring 52 Kanals and 17 marlas at village Ghasola (hereafter *Ghasola land*) was purchased by the Propounder in the name of the deceased (deceased Testator); (vi) Raisina land was purchased by the Propounder in the name of the deceased Testator; (vii) that the Testator was educated up to the fifth class and the Will was written in English; (viii) that the address and the age of the Testator was not mentioned in the Will; and (ix) that the deceased Testator had not agreed to transfer the Raisina land to the Propounder.

28. First and foremost, it is necessary to note that the evidence does not establish that the Will had been disclosed prior to the Propounder filing the probate petition. Undisputedly, the Will was not in possession



of any of the immediate family members of the deceased Testator. *Although*, the Propounder has refuted the contention that the Will had not been disclosed, there are no material particulars as to when and how the Will was disclosed to the appellants (widow and sons of the deceased). This is considering that none of them were present when the Will was allegedly executed by the Testator.

29. The probate petition was filed four years after the demise of the Testator. It was claimed that the Propounder had filed the petition as the concerned authorities were not mutating the Raisina land in favour of the Propounder. However, there is no material on record to show as to when the Propounder had applied for mutation of the Raisina land on the basis of the Will. It is also material to note that the land records produced by the appellants *reflect* that the Testator was in possession of the Raisina land. Thus, the fact that the Will was not produced immediately after the demise of the Testator and no steps were taken for securing the letters of Administration or a probate does give rise to doubts with regards to the Will.

30. The second aspect is that none of the family members were involved at the *time* of execution of the alleged Will. Neither, the widow (appellant no.1) of the Testator nor, any of his friends were involved or were present at the time of execution of the Will. According to the Propounder, the Will was executed in the office of his counsel. In his cross-examination, the Propounder admitted that he was present at the time of the alleged execution of the Will. It is stated that the Will



was attested by the clerk of the Propounder's counsel and the classmate of the Propounder's son. In his cross-examination, the Propounder had accepted that the advocate in question was his advocate since 1989. On further cross-examination, he stated that the advocate in question was his counsel since 1991.

31. In *Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao & Ors.*: (2006) 13 SCC 433, the Supreme Court had observed as under:

“34. There are several circumstances which would have been held to be described (sic) 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.

[See H. Venkatachala Iyengar v. B.N. Thimmajamma and Ors. MANU/SC/0115/1958 : AIR 1959 SC 443 and Management Committee T.K. Ghosh's Academy v. T.C. Palit and Ors. MANU/SC/0053/1974 : AIR 1974 SC 1495]”

32. Thus, in cases where the Propounder takes a prominent part in the execution of the Will – which is apparent in the present case – the same would be a suspicious circumstance in cases where the execution of the testamentation instrument is called in question.

33. The third aspect that gives rise to suspicion is the exclusion of the Testator's natural heirs from the disposition. The Testator had



bequeathed valuable lands in favour of his elder brother. Thus, excluding his widow and his minor children. Not including natural heirs may not by itself be sufficient to question a Will, but is certainly an added factor, which would warrant a closer examination of the circumstances involving the execution of the Will.

34. In *Anil Kak v. Kumari Sharada Raje & Ors.: (2008) 7 SCC 695*, the Supreme Court had held 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.”

35. Whilst excluding a natural heir from the bequest may not by itself be held to be suspicious. However, it would be necessary for the court to satisfy itself as to the reasons for the same.

36. In the present case, there is no reason as to why a Testator would want to deprive his widow and his minor children from his estate. The



Will indicates that the Raisina land was bequeathed by the Testator to the Propounder for the reason that the Raisina land belonged to the Propounder and it was understood that it would revert to him. In addition, there were three other aspects mentioned in the recitals: First that the Propounder had played a role of mentor and a guide and had supported the Testator to earn a living for himself; second that the Propounder had arranged for a truck bearing registration no. DLL8121 to be transferred in the name of the Testator; third he was also engaged to supervise the work of brick kiln run by the Propounder. It is recorded in the Will that in the year 1981, the Propounder had purchased the Ghasola land out of resources in the name of the Testator and in the month of January and March 1982, the Propounder had purchased the Raisina land from his resources in the name of the Testator. The Will also states that the Ghasola land was sold in the year 1991 and the sale proceeds were used for purchase of 14 acres of land at Kundal, District Sonapat, Haryana (Kundal land). The Will stated that the Raisina land belonged to the Propounder and it was a family understanding that the Testator would arrange to have the same transmitted to him.

37. However, in the present case, none of the facts as stated stands established. Admittedly, the Propounder had filed a suit (Suit No.470 of 1991) against his father (Sh. Risal Singh) and his brother. During the proceedings, the father of the Testator (and the Propounder) expired and his legal heirs including the Testator were brought on record. The disputes were settled in terms of Memorandum of Family Settlement dated 08.09.1993. The settlement indicates that the deceased father of



the Testator and the family-owned substantial assets. The three sons of the deceased Risal Singh, being the Testator, the Propounder, and Sher Singh had, accordingly, divided the assets amongst themselves. The business of the firms Chaudhary Bhatta and Jai Singh and Co. fell exclusively to the share of the Testator. The settlement also indicates that there were joint holdings of land and other properties as well. Thus, the Testator had the means to support himself and his family.

38. In his cross-examination, the Propounder had accepted that the Testator was having sufficient agricultural income to support himself. The Propounder had also not produced any materials, which would establish that the Testator was in need of monetary support or that the same was provided by the Propounder. On the contrary, the evidence indicates that the family of the Testator and the Propounder had substantial properties, which were subsequently divided. Thus, the reason that the Propounder had supported the Testator to earn his living is not established.

39. The second reason recoded in the gift of the Will is a truck bearing registration no. DLL8121 to the Testator. However, there is no material on record to establish that the Propounder had purchased the said truck. His testimony in cross-examination is relevant. Initially, PW-1 (the Propounder) had denied that the firm Chaudhary Bhatta owned any truck. However, subsequently, he accepted that two trucks (including the truck bearing registration No.DLL8121) were attached with the business of the firm Chaudhary Bhatta. He, subsequently,



stated that the firm 'Chaudhary Bhatta' was dissolved in the year 1977-78 and he had purchased the truck from the partners at the time of the dissolution. He also admitted that the truck was never registered in his name. It is apparent that his testimony is somewhat inconsistent considering that it is admitted that the business of Chaudhary Bhatta fell to the share of the Testator. More importantly, there is no material on record to establish that the truck in question bearing No.DLL8121 was gifted by the Propounder to the Testator. Admittedly, he had not made any payment in cash or from his bank account for the purchase of the truck. In his cross-examination, he claimed that it was adjusted from the profit and loss of the account at the time of dissolution of the firm, Chaudhary Bhatta. He also admitted that in terms of the family settlement, the business of the firm Chaudhary Bhatta which operated the Brick Kiln, fell exclusively to the share of the Testator. The Propounder also stated that the truck was in the name of Chaudhary Bhatta Company and had not disclosed the same in his returns. This reason for the bequest is also not established.

40. The reason for the bequest being that the Ghasola land and the Raisina land was purchased by the Propounder in the name of the Testator, has also not been proved. The admitted facts are that the Ghasola land as well as the Raisina land were in the name of the Testator. The Ghasola land was sold by the Testator and the Kundal land was purchased from the sale proceeds. It is material to note that the Kundal land was purchased in the Testator's name as well as in the name of his wife. According to the Propounder, the Ghasola land had



been sold with his consent. However, there is no material to remotely establish that the Ghasola land had been purchased by the Propounder or from his funds as claimed. According to the Propounder, he was the true owner of the Ghasola land and the Raisina land (Raisina land) as he had paid the consideration for the same although the land had been purchased in the name of the Testator. Clearly, this militates against the admitted facts that the Ghasola land was sold and the proceeds were utilized to purchase the Kundal land by the Testator jointly with his wife. The Kundal land is also not the subject of the bequest.

41. The Propounder's testimony in cross-examination also indicates that the Propounder had little knowledge as to the details of the purchase transaction of the Ghasola land or the Raisina land. In his cross-examination, he claimed that the entire consideration was paid in cash. Later in his cross-examination, he stated that he did not remember that the amount was paid by way of a demand draft or not. He further stated that he did not remember as to which bank or from which account the draft was made. He also did not know the persons from whom the Ghasola land or the Raisina land was purchased. Thus, he neither knew the manner in which the consideration was paid nor the persons from whom the lands were purchased. The Propounder stated that he was an income tax assessee. He admitted that the purchase of land was not declared to the income tax authorities.

42. The principal reason stated in the Will for bequeathing the Raisina land to the Propounder was that he had purchased the same and



it was a family understanding that the same would revert to him after the demise of the Testator. This fact is not established by any credible material.

43. In his cross-examination, the Propounder (respondent no.2) now provided another reason for the Testator executing the Will. He claimed that the Will was executed as the birthday gift to the Propounder. The said explanation does not appear rational. The execution of the Will did not transmit the Raisina land to the Propounder. It could hardly be considered as a birthday gift. This also militates against the Propounder's claim that the Raisina land always belonged to him. Clearly, if this was so, there was no occasion for the Testator to gift it on his birthday. It is relevant to note that no such statement was made in the affidavit filed by the Propounder.

44. It is also important to note that the Testator was younger than the Propounder. He was barely 39 years of age, when he died in an accident. Prior to his demise, he was in good health. He suffered from a handicap and used crutches. But he was not ailing. There was nothing to suggest that he would not survive his elder sibling. The Will does not make any provision for bequest of the Raisina land in the event the beneficiary (the Propounder) pre-deceased the Testator. The Propounder's contention that the Will was executed by the Testator because as per the alleged understanding, the Raisina land was to revert to the Propounder after the demise of the Testator rests on the assumption that the Testator would pre-decease the Propounder. As is apparent, this contention is



available only on the hindsight after the Testator had expired. There was no reason at the material time to even assume that the Testator would not survive the Propounder. Thus, if the Testator wanted to ensure that the Raisina land revert to the Propounder or his family, it would be relevant to make suitable provisions for the Raisina land to be bequeathed to the heirs of the Propounder in the event he pre-deceased the Testator. However, the Will does not make any such provision. Thus, we find the entire explanation canvassed by the Propounder to justify the bequest in his favour, unpersuasive.

45. It is also material to note that according to the Propounder, the Will was executed from the chamber of his advocate.

46. The next aspect, which is relevant, is that the Will is of three pages and the Testator's signature appears only on the last page. The last page of the Will does not contain any provision regarding the bequest. The same is contained on second page of the Will, which is not signed. Although, it is not necessary that the documents be signed on each page, however, it is a usual practice for the person executing a document to sign each page to obviate any further challenge. There are two documents on record, which have been executed by the Testator 'Memorandum of Settlement dated 08.09.1993', and 'Memorandum of Family Arrangement dated 05.01.1998'. Each of the two documents have been signed by the signatories on all pages. Thus, it is obvious that the Testator was fully aware of the benefits of signing each page of the document. It is important to note that according to the Propounder and



Sh. Ankur Walia (PW-1 as well as PW2), the Will was executed in an Advocate's chamber. Thus, it is reasonable to assume that the Testator would have had the benefit of legal advice as well. There is no credible reason why the Testator would have confined his signature to the third page of the Will.

47. In *Bharpur Singh and Ors. v. Shamsher Singh: AIR 2009 SC 1766*, the Supreme Court had referred to an earlier decision in *Jaswant Kaur v. Amrit Kaur and Ors.: (1977) 1 SCC 369*, had observed as under:

“22. We may notice that in *Jaswant Kaur vs. Amrit Kaur & Ors.: [1977] 1 SCC 369* this Court pointed out that when the Will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and defendant. An adversarial proceeding in such cases becomes a matter of Court's conscience and Propounder of the Will has to remove all suspicious circumstances to satisfy that Will was duly executed by Testator wherefor cogent and convincing explanation of suspicious circumstances shrouding the making of Will must be offered.

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.”

48. In the present case, undeniably, there are suspicious circumstances, which surround the execution of the Will. First, that the disposition is improbable and unfair as it excludes the natural heirs including minor sons. Second, that the Propounder had played a major part in execution of the Will. The Will was executed at the counsel's office. He was present when the Will was purportedly executed. The attesting witnesses are the clerk of his counsel and the classmate of his son, who was at that time was barely 18 years of age. Third, that the Will did not see light of the day for almost four years.

49. According to the appellants, the contents of the Will were discovered after inspection of the court file of the probate petition was carried out. The Propounder disputes the same. However, it is clear from the evidence that at least till filing of the probate petition, the Will was not widely disseminated. Fourth, that the recitals of the Will are not established. Although, the recitals indicate that the purchase of the Raisina land was funded by the Propounder, the Propounder has failed to prove the same. He was neither aware of the persons from whom the Raisina lands were purchased nor aware of the manner in which the consideration was paid. His testimony as to the mode of payment of consideration (cash or bank draft) is inconsistent. Admittedly, the



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income tax returns furnished by the Propounder did not disclose the purchase of the Raisina land. Fifth, that the Testator had access to legal advice, yet the Will was not registered. And, the Will has not been signed on all pages.

50. In view of the above, we allow the present appeal and set aside the impugned order.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 06, 2024

RK/gsr

Signature Not Verified

Digitally Signed
By: DUSHYANT
RAWAL
Signing Date: 07.03.2024

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