2024:DHC:5965

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

RESERVED ON – 28.05.2024

% ***PRONOUNCED ON –08.08.2024***

\+ TEST.CAS. 64/2021, I.As. 10414-10416/2021 & I.As. 10417 & 10419 of 2021

HARMANDER KAUR ..... Petitioner

Through: Mr.Ambar Qamaruddin, Mr.Ajay Telesara and Mr.Sarfaraz Karim, Advts.

versus

STATE (GOVT OF NCT OF DELHI) AND ORS. ..... Respondents

Through: Mr.Shashi Pratap Singh and Mr.Sparsh Agarwal, advts. for R-1.
Mr.Anubhav Gupta, Panel Counsel (Civil), GNCTD with Mr.Amit Singh, Mr.Varun Garg and Mr.Saksham Gupta, Advts. for R-1.

\+ TEST.CAS. 66/2021, I.As. 10526-10528/2021 & I.As. 10529/2021 & 10531/2021

HARMANDER KAUR ..... Petitioner

Through: Mr.Ambar Qamaruddin, Mr.Ajay Telesara and Mr.Sarfaraz Karim, Advts.

versus

STATE OF GNCTD & ORS. ..... Respondents

Through: Mr.Shashi Pratap Singh and Mr.Sparsh Agarwal, advts. for R-1.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. The present petitions/applications have been filed by the petitioner under Section 276 of the Indian Succession Act, 1925 (herein referred to as "*the Succession Act*"), seeking issuance of Probate/Letter of Administration of the Wills both dated 12th October 2011, in respect of the estate of the deceased Shri Ajit Singh Ahuja, and deceased Smt. Amrit Kaur Ahuja, as detailed below:

A. Properties/assets left behind by Late Shri Ajit Singh Ahuja in accordance to his Will:

i.) 30% share in plot of size 250 sq.yds. at No. R-5, South Extension Part-11, New Delhi. (This 30% share to the testator subsequent to execution of the Will by virtue of a Deed of Settlement dated 14.11.2011 (Ex. PW-3/4) and as per the Will of the testator to the petitioner as the Will stated that "*...If there is any other property movable or immovable at present not mentioned herein or acquired by me after the date of this Will and are in my single name, I bequeath those properties to my daughter Mrs. Harmander Kaur.*"

ii.) Saving accounts and FDRs specified in will dated 12.10.201 1 and bequeathed by Shri Ajit Singh Ahuja in favour of the petitioner as detailed in Schedule "A" annexed to the petition. Copy annexed in Schedule A (Ex. Pw 3/5 and Mark D to F).

iii.) Saving accounts and FDRs not specified in will dated 12.10.2011 but bequeathed by Shri Ajit Singh Ahuja in favour of the petitioner as detailed in Schedule "B" annexed to the petition. Copy annexed in Schedule B (Mark G and Ex. Pw. 3/6 to Ex. Pw 3/9).

iv.) FDR bearing No. 52230528356 with Standard Chartered Bank as mentioned in Para 8(d) of the Petition.

v.) Details of shares in physical form bequeathed by Shri Ajit Singh Ahuja in favour of the petitioner as detailed in Schedule "C" annexed to the petition.

vi.) Details of shares in demat form bequeathed by Shri Ajit Singh Ahuja in favour of petitioner as detailed in Schedule "D" annexed to the petition. Copy annexed in schedule D (Ex. Pw 3/265).

vii.) Details of shares in physical form bequeathed by Shri Ajit Singh Ahuja in favour of petitioner but misplaced/not traceable as detailed in Schedule "E" annexed to the petition Copy annexed in Schedule E (Mark G and Ex. Pw 3/266 to Ex. Pw 3/267).

viii.) Details of dividend upon shares bequeathed by Shri Ajit Singh Ahuja in favour of petitioner as detailed in Schedule "F" annexed to the petition. Copy annexed in schedule F (Ex. Pw 3/272 to Ex. Pw 3/396).

B. Properties/assets left behind by Late Smt. Amrit Kaur Ahuja in accordance to her Will:

i.) Five-storey building (Basement + Ground Floor + First Floor + Second Floor + Third Floor) built on Plot No.5. Panchsheel Community Centre. New Delhi.

ii.) 70% share in the plot of size 250 Sq. Yds. at No.R-5, South Extension Part-11, New Delhi (40% share bequeathed by Sh. Ajit Singh Ahuja to the testator and 30% share owned by the testator and now the total of 70% share has come to the petitioner.

iii.) Saving accounts and FDRs specified in will dated 12.10.2011 and bequeathed by Smt. Amrit Kaur Ahuja in favour of the petitioner as detailed in Schedule "A" annexed to the petition.

iv.) Saving accounts and FDRs not specified in the Will dated 12.10.2011 but bequeathed by Smt. Amrit Kaur Ahuja in favour of the petitioner as detailed in Schedule "B" annexed to the petition. Copy annexed in Schedule B (Ex. Pw. 3/4 to Ex. Pw 3/7).

v.) Locker No.729 with IIDFC Bank. Defence Colony, New Delhi.

vi.) Details of shares in physical form including Sovereign Gold Bonds bequeathed by Smt. Amrit Kaur Ahuja in favour of the petitioner as detailed in Schedule "C" annexed to the petition. Copy annexed in Schedule C (Ex. Pw 3/8 to Ex. Pw 3/29 and Sovereign Gold Bond Ex. Pw. 3/30).

vii.) Details of shares in Demat form bequeathed by Smt. Amrit Kaur Ahuja in favour of the petitioner as detailed in Schedule "D" annexed to the petition. Copy annexed in Schedule D (Ex. Pw 3/31).

viii.) Details of shares in physical form bequeathed by Smt. Amrit Kaur Ahuja in favour of the petitioner but misplaced/not traceable as detailed in Schedule "E" annexed to the petition

Copy annexed in E (Ex. Pw 3/32 to Ex. Pw 3/37).

ix.) Details of dividend upon shares bequeathed by Smt. Amrit Kaur Ahuja in favour of the petitioner as detailed in Schedule "F" annexed to the petition.

2. Briefly stated, late Shri Ajit Singh Ahuja (herein referred to as *"Testator 1"*) s/o late Sh. Santokh Singh is the father and Smt. Amrit Kaur Ahuja (herein referred to as *"Testator 2"*) is the mother of the Petitioner and Respondents no.2 and 3. *Testator 1*, who was a resident of A-424, Defence Colony, New Delhi-110024, registered a Will vide registration No.5427 in Book No.3, Vol. No.I 945 on pages 5 to 8 on 14.10.2011 in the office of Sub Registrar-V, New Delhi. Similarly, *Testator 2*, resident of A-424, Defence Colony, New Delhi-110024, also registered a Will vide registration No. 5428 in Book No.3, Vol. No.I 945 on pages 9 to 11 on 14.10.2011 in the office of Sub-Registrar-V, New Delhi. The *Testator 1* and *Testator 2* expired on 02.09.2018 & 09.06.2020 respectively in Delhi.

3. Late Shri Ajit Singh Ahuja *(Testator 1)* and Late Smt. Amrit Kaur Ahuja*(Testator 2)* left behind the following legal heirs:

i. MrsHarmander Kaur (Daughter- Petitioner)

ii. MrsSarabjeet Kaur (Daughter- R2)

iii. MrsSuminder Kaur (Daughter- R3)

4. It has been submitted by the counsel for the petitioner that it is a matter of record that *Testator 1* vide Will dated 12.10.2011 bequeathed the two-and-a-half-story house built up property bearing no. A-424, Defence Colony, New Delhi in favor of his wife Smt. Amrit Kaur Ahuja i.e., *Testator 2* (now deceased) with full rights to lifetime stay

and full authority to get mutation done in her single name with MCD Delhi, to rent, mortgage, or sell the same. Further, the *Testator 1* stated that if *Testator 2* does not dispose of this property during her lifetime by sale or bequeath to anybody under her Will, in that case, the House bearing No. A-424, Defence Colony, New Delhi-110024 shall pass to their daughter Mrs. Harmander Kaur (petitioner herein) as absolute owner.

5. It has further been submitted that the *Testator 1* further bequeathed a 40% share in the plot of size 250 sq. yds. at No. R-5, South Extension Part-II, New Delhi in favour of his wife Mrs. Amrit Kaur Ahuja i.e., *Testator 2* (now deceased) with full rights to lifetime stay and full authority to get mutation done in her single name with MCD Delhi, to rent, mortgage, or sell the same. Further, the Testator stated that if *Testator 2* does not dispose of this property during her lifetime by sale or bequeath to anybody under her Will, in that case, the 40% share in the plot of size 250 sq. yds. at No. R-5, South Extension Part-II, New Delhi shall pass to their daughter Mrs. Harmander Kaur (petitioner herein) as absolute owner.

6. Learned counsel lastly submits that the present Petition is uncontested as Respondent no 2 and 3 have been proceeded *ex-parte* by this Court vide order dated 23.08.2022.

7. I have considered the submissions of the petitioner and have also gone through the documents and Will placed on record.

8. The notice to the respondents in the petition TEST.CAS.64/2021 was issued on 18.08.2021 and in the petition TEST.CAS.66/2021 it was issued on 23.08.2021 and the matters were directed to be listed before

the Joint registrar for the completion of proceedings. Notices were also issued to the concerned SDM in both the petitions for placing on record the valuation report of the assets/properties mentioned in Schedule A to F of the petitions.

9. After the completion of the service, citations were published in "*Rashtriya Sahara*" (Hindi) and "*The Statesman*" (English) on 11.09.2021 and 10.09.2021, respectively, and filing of the valuation report according to which the properties were assessed as in total to be around Rs.9,96,99,096/-, respondents no 2 and 3 failed to appear, hence they were proceeded *ex-parte* vide order dated 23.08.2022. Thereafter, evidence was recorded and the evidence was completed on 01.12.2023.

10. Before considering the evidence led by the petitioner, it is pertinent to reproduce the relevant provisions dealing with the validity and execution of a "Will" which are as under:

> *"**Section 63 of the Indian Succession Act, 1925***
> ***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 acknowledgement of his signature or mark, or 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.

Section 68 of Indian Evidence Act 1872

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: xxx"*

11. Further, it would be apposite to note the principles regarding the nature of proof required to prove a "Will" as elucidated by the Apex Court in its decision in "***Meena Pradhan &Ors. V. Kamla Pradhan &Anr***"2023INSC847, wherein it was inter-alia held as under:

> *"10. Relying on H. VenkatachalaIyengar v. B.N.Thimmajamma,1959 Supp (1) SCR 426 (3-Judge Bench), Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135 (3-Judge Bench), Janki NarayanBhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91(2-Judge Bench) Yumnam Ongbi TamphaIbema Devi v. Yumnam*
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> *Joykumar Singh, (2009) 4 SCC 780 (3-Judge Bench) and Shivakumar v. Sharanabasappa, (2021) 11 SCC 277 (3-JudgeBench), we can deduce/infer the following principles required for proving the validity and execution of the Will:*
>
> *i. The court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;*

ii. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

iii. A Will is required to fulfill all the formalities required under Section 63 of the Succession Act, that is to say:

(a) 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 the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have 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 such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

iv. For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

v. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

vi. If one attesting witness can prove the execution of the

Will, the examination of other attesting witnesses can be dispensed with;

vii. Where one attesting witness examined to prove the Will *fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;*

viii. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.

ix. The test of judicial conscience has been evolved for dealing with those cases where the execution of the Willis surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;

x. One who alleges fraud, fabrication, undue influence etcetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.
xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind'. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising legitimate in nature would qualify as auspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc."

12. From a plain reading of the above-cited case, broadly, it needs to be demonstrated that: (a) the testator signed the Will voluntarily; (b) he

was in a healthy mental state at the time of execution; (c) he understood the purpose and consequences of the Will; and (d) there were no questionable circumstances surrounding the Will's execution.

13. In order to meet the need to prove the Will in accordance with Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, the petitioner has examined the following attesting witnesses: (i) Mr.Kulvinder Singh (PW-1), (ii) Mr.Amar Deep Singh (PW-2). To substantiate the Will, the petitioner submitted affidavits from both attesting witnesses attesting to the testator's execution of both Wills in their presence. Mr. Kulvinder Singh S/o Sh. Ravinder Singh, one of the attesting witnesses who was examined as PW-1, tendered his evidence by way of an affidavit stating that the testator was in good mental health at the time the Will was executed and that the testator signed the document in front of him and the other attesting witness, i.e., Mr. Amar Deep Singh (PW-2). Further, PW-1 identified his signatures in both Wills. PW-1 also stated that both the attesting witnesses signed the will in front of the testator and each other.

14. Similarly, Mr.Amar Deep Singh S/o Sh. P.S. Bami, one of the attesting witnesses who was examined as PW-2, tendered his evidence by way of an affidavit stating that the testator was in good mental health at the time the Will was executed and that the testator signed the document in front of him and the other attesting witness, i.e., Mr.Kulvinder Singh (PW-1). Further, PW-2 identified his signatures in both Wills. PW-2 also stated that both the attesting witnesses signed the will in front of the testator and each other.

15. Lastly, the petitioner, Mrs. Harmander Kaur, W/o Shri Gurpreet Singh

Chawla, examined herself as PW-3 and tendered her affidavit marked as (PW3/A) by way of examination-in-chief. PW-3 identified the signatures of the testator(s) in both the Wills. PW-3 further stated that she could identify the signatures as she is well conversant with the signatures of the testator(s)as she had seen them signing documents and also having come across documents duly signed by them in the normal and regular course while residing with them. Lastly, PW-3 stated that both the Will(s) dated 12.10.2011 were the last Will(s) executed by the testator(s).

16. In light of the aforementioned, it is clear that the petitioner has been able to demonstrate that both the Wills, both dated 12th October 2011, in respect of the estate of *Testator 1*, and *Testator 2* were executed by them while they were of sound mind, and they signed it in the presence of two attesting witnesses who had also signed the Wills in their mutual presence.

17. Now the question which remains to be considered is whether there are any questionable circumstances surrounding the execution of both Wills. In the present cases, the respondents i.e., the sisters of the petitioner have been given ample opportunities to appear before the court and file any objection to the Probate petitions filed by the petitioner however, none appeared despite being served on various occasions. On the basis of the testimony of the attesting witnesses, and the petitioner, this court is satisfied that there are no suspect-full circumstances which question the execution of the Wills.

18. The testimonies of the witnesses have remained un-assailed and unchallenged. It has been brought on record by the credence material

that the testator(s) were in sound mind and the attesting witnesses have duly proved the same. There is no material giving rise to any suspicious circumstance. There is nothing on the record to suggest that the Will(s) of the testator(s) Shri Ajit Singh Ahuja (deceased), and Smt. Amrit Kaur Ahuja (deceased) are not genuine.

19. Taking into consideration the above findings, I believe that the petitioner has successfully proved the Wills's execution in accordance with Section 63 of the Indian Succession Act and Section 68 of the Evidence Act and has also satisfied the conscience of this court regarding the circumstance in which the execution of both Will(s) is sought. As a result, there is nothing stopping the petitioner from receiving probate/Letters of Administration of the Wills.

20. The petitions are, accordingly, allowed and the probate with respect to both the Wills dated 12.10.2011 is granted in favour of the petitioner. Since petitioner is the sole beneficiary under both the Will(s), there will be no requirement of petitioner having to give any administration bond or surety bond. Petitioner will however have to pay the court fees necessary for granting letters of administration with both the Wills annexed therewith.

21. The present petitions along with all the pending applications are allowed and disposed of accordingly.

DINESH KUMAR SHARMA, J

AUGUST 08, 2024/*rb/ht.*