



2024:DHC:4516



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

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Reserved on: 01st February, 2024

Pronounced on: 29th May, 2024

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CS (OS) 2682/2012

ARUN SUD

S/o Late Shri Lalit Prasad Sud

R/o 4, Old Still Road

RIDGE FIELD CT-06877 (U.S.A)

..... Plaintiff

Through: Mr. Rakesh Kumar, Ms. Preeti
Kashyap & Mr. Varun Pandit,
Advocates.

versus

1. **DR. (MRS.) ABHA SOOD**

W/o Dr. Kuldeep Sood

R/o F-187, Prashant Vihar,
Delhi-110085.

2. **ALKA SOOD**

W/o Sh. Surinder Sood

R/o 93 – HAIG AVENUE
Stamford Connecticut
CT-06905 (U.S.A)

3. **ALOK SUD**

S/o Late Sh. Lalit Prasad Sud

R/o GF, D-55, Anand Niketan,
New Delhi-110021

.....Defendants

Through: Mr. Ajay Dabas & Ms. Priyanka
Dagar, Advocates.

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TEST. CAS. 71/2016

ABHA SOOD

W/o Dr. K.L. Sood,



F-187, Prashant Vihar,
Delhi-110085

..... Petitioner
Through: Mr. Ajay Dabas & Ms. Priyanka
Dagar, Advocates.

versus

1. **STATE** Respondent No. 1
2. **ARUN KUMAR SUD**
S/o Late Sh. L.P. Sud
4, Old Still Road,
Ridge Field, Connecticut (C.T.)
Zip code: 06869 (U.S.A) Respondent No. 2
3. **ALKA SOOD (SINCE DECEASED)**
Represented through her LRs: -
 - (a) **ARPIT KUMAR SOOD** (Son)
S/o Mrs. Alka Sood & Mr. Surinder Sood
R/o 93, Haig Avenue,
Stamford, Connecticut,
CT-06905, USA.
 - (b) **SURBHI SURINDER SOOD** (Daughter)
D/o Mrs. Alka Sood & Mr. Surinder Sood
R/o 93, Haig Avenue,
Stamford, Connecticut,
CT-06905, U.S.A. Respondent No. 3
4. **ALOK SUD**
S/o Late Sh. Lalit Prasad Sud
R/o GF, D-55, Anand Niketan,
New Delhi-110021 Respondent No. 4
Through: Mr. Rakesh Kumar, Ms. Preeti
Kashyap & Mr. Varun Pandit,
Advocates.



CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The plaintiff Mr. Arun Sud has filed the *suit for Partition, Rendition of Accounts and Injunction* in the year 2012 in respect of the moveable and immovable properties of the mother, Smt. Ved Sud.
2. Dr. Abha Sood, the sister of Mr. Arun Sud, has filed a *Probate case* in the year 2016 in respect of Will dated 18.01.2010 of the testatrix Smt. Ved Kumari Sud to claim that the property has to devolve in the manner as stated in the Will. **The two suits are being decided together as they involve common issues.**
3. The **factual background of the present disputes** is that Late Shri Lalit Sud (*father of the parties*), the absolute owner of the Property bearing No. D-55, Anand Niketan, New Delhi-110021, died intestate in March, 2007. He was survived by five legal heirs, namely his **Wife** late Smt. Ved Kumari Sud, **two sons** namely, Arun Sud (*plaintiff in CS (OS) 2682/2012 and respondent No. 2 in PC No.71/2016*) & Alok Sud (*defendant No. 3 in CS(OS) 2682/2012 and respondent No. 4 in PC No.71/2016*) and **two daughters** namely, Alka Sood (*defendant No. 2 in CS (OS)2682/2012 and respondent No. 3 in PC No.71/2016*) who died on 20.04.2012 and is represented by her LRs Arpit Kumar Sood and Surbhi Surinder Sood; and the second daughter, Dr. Abha Sood (*defendant No. 1 in CS (OS) 2682/2012 and petitioner in PC No.71/2016*).
4. **It is submitted in the plaint by** Arun Sud, the eldest son of Smt. Ved Kumari Sud that Late Shri Lalit Prasad Sud was the registered owner in



respect of the land underneath Property bearing No. D-55, Anand Niketan, New Delhi-110021 admeasuring 238 sq. yards *vide* Perpetual Lease Deed executed in his favour. After his demise in March 2007, all the four children of Late Shri Lalit Prasad Sud executed Relinquishment Deed in respect of the Property bearing No. D-55, Anand Niketan, New Delhi-110021 in favour of their mother. Thereafter, Smt. Ved Sud died intestate on 30.01.2010, after which all the four siblings became entitled to 25% share each in the property at Anand Niketan. No partition of the suit properties has ever taken place and has sought the partition by metes and bounds, of the following moveable and immoveable properties: -

- (i) Basement, Ground floor and Second Floor of House No. D-55, Anand Niketan, New Delhi-110021, (*hereinafter referred to as “suit property No. 1”*)
- (ii) Property in Village Dehra (Himachal Pradesh) (built-up house), (*hereinafter referred to as “suit property No. 2”*)
- (iii) Bank accounts, fixed deposits receipts, shares, securities with different companies, jewellery and other household items.

5. **Defendant Nos. 2A & 2B (legal heirs of defendant No. 2 Alka Sood)** have concurred with the averments made in the plaint. It is admitted that late Smt. Ved Kumari Sud became the absolute owner of the said immovable property in the year 2007 through the Relinquishment Deeds executed by the plaintiff and defendant Nos. 1 to 3 in her favour.

6. **The defendant No. 1/Dr. Abha Sood and defendant No. 3/Alok Sud in their Written Statement** have also admitted that Smt. Ved Sud became the absolute owner by virtue of the Relinquishment Deed dated 27.11.2007 executed by all the children in favour of their mother. Smt. Ved



Sud died on 30.01.2010 but Abha Sood and Alok Sud have asserted that the mother has left behind the Will dated 18.01.2010 executed by her in complete, sound and disposing mind without any influence and coercion, by virtue of which she revoked all her previous Wills. The factum of execution of the Will was duly brought to the notice of the plaintiff/Arun Sud by the defendant No. 1/Dr. Abha Sood *vide* Reply dated 25.01.2011 to the Legal Notice dated 10.01.2011 that was issued by the plaintiff Arun Sud.

7. It is, therefore, contended that after the demise of Smt. Ved Sud, all the children have not acquired 25% share each in the suit properties but the properties devolve in the manner as stated in the Will dated 18.01.2010.

8. **The plaintiff in his Replication** denies the execution of the Will by their mother.

9. **PC No. 283/2014 has been filed by the `petitioner/Dr. Abha Sood** seeking Probate in respect of the Will dated 18.01.2010 executed by Late Smt. Ved Sud, in sound mind in the presence of two attesting witnesses.

10. **The Probate petition is contested by Shri Arun Sud and Arpit Kumar Sood and Surbhi Surinder Sood** (legal heirs of respondent No. 3/Alka Sood) who have claimed that the alleged Will dated 18.01.2010 is a forged document. It is submitted that the petitioner/Dr. Abha Sood has failed to disclose in her Probate petition about the Partition Suit bearing No. CS (OS) 2682/2012 which is already pending adjudication. It has been incorrectly asserted in the Partition Suit that Smt. Ved Sud died intestate.

11. The Probate Petition bearing PC No. 32/2012 titled Abha Sood vs. State & Ors. had been earlier filed before the Additional District Judge-II, Rohini Courts, Delhi seeking Letter of Administration in respect of the alleged Will dated 18.01.2010 by Dr. Abha Sood but the petition was



dismissed on the ground of territorial jurisdiction by the Court of Additional District Judge, Delhi *vide* Order dated 12.11.2013. The *second (present) Probate Petition* was thereafter, filed in the Patiala House Courts which has been transferred to this Court *vide TR.P.(C) No. 20/2015*.

12. It is further contended that the petitioner/Dr. Abha Sood has been adopting delay tactics by filing false and frivolous petitions for the simple reason that she along with the respondent No. 4/Alok Sud, has been receiving rental income of the second floor of the suit property No.1. Moreover, the respondent No. 4/Alok Sud is staying in the basement and ground floor of the Anand Niketan property.

13. Further, the petitioner/Dr. Abha Sood and the respondent No. 4/Alok Sud are holding the Fixed Deposits and Securities and suit property No.2 in Himachal Pradesh and are also receiving the rentals from the said property.

14. It is in the interest of the petitioner/Dr. Abha Sood to delay the proceedings for which reason the present Probate petition has been filed.

15. It is further asserted that the Will dated 18.01.2010, is not beyond suspicion as the Original Will has not been produced. There are no signatures of the Testator on the first page of the Will. Moreover, the Will had been executed on 18.01.2010, while Smt. Ved Sud died after 12 days i.e., 30.01.2010 as she was suffering from Lung Cancer and was in bad health for the last couple of months. Smt. Ved Sud was not medically fit as she had been bedridden due to broken/replacement of hip for some time. Smt. Ved Sud was unable to even recognise anyone between 22.01.2010 till 30.01.2010. She was admitted in ICU and was not conscious being under the influence of heavy medication. There is no Certificate from the competent Medical Officer certifying that Smt. Ved Sud was in good health.



16. Further, there is no mention that the contents of the Will were read over to her in vernacular or that the contents were understood by Smt. Ved Sud. The two alleged witnesses had nothing to do with the family of Testatrix and the said two witnesses apparently had been won over by the petitioner/Dr. Abha Sood and respondent No. 4/Alok Sud to become a witness.

17. Furthermore, the affidavit of only one witness has been placed on record. The alleged Will has not been registered with the concerned Sub-Divisional Magistrate. Much less, it is not even notarised. There is no explanation given for the exclusion of some of the legal heirs in the alleged Will.

18. It is also claimed that the Will is a forged and fabricated document and no Probate can be granted in respect of the said Will.

19. The **issues** in CS(OS)2682/2012 were framed on 08.09.2016 as under:

“1. Whether late Smt. Ved Sood had executed the Will dated 18.01.2010 and whether the said Will is valid? OPD

2. Whether the suit is maintainable? OPP

3. Whether the plaintiff is entitled for rendition of the complete accounts of the suit properties, consisting of its rental income and its interest/dividend income as prayed for in the present suit? OPP

4. Relief.”

20. The **issues** in the TEST.CAS. 71/2016 were framed on 25.09.2017 as under: -

“(i) Whether Will dated 18.01.2010 is last validly executed Will of late Smt. Ved Kumari Sood?

(ii) Relief.”



21. The Suit and the Probate Petition were clubbed *vide* Order dated 29.03.2016 and the common evidence in both the Suit and the Testamentary Case were recorded.
22. Shri Arun Sud appeared as **PW1** and has tendered his Affidavit by way of Evidence Ex PW1/A.
23. **DW1** Dr. Abha Sood, the petitioner in the testamentary case, tendered her Affidavit by way of Evidence Ex DW1/A.
24. **DW3** (sic.) Shri Alok Sud tendered his Affidavit by way of Evidence Ex DW3/A. No witness as DW2 has been examined.
25. **DW3/1**, Sandeep Gupta, the attesting witness to the Will dated 18.01.2010 has tendered his Affidavit of Evidence Ex DW3/1A.
26. **Submissions heard and the record as well as the evidence perused.**
27. It is the admitted case that the Anand Niketan property was originally owned by Late Shri Lalit Prasad Sud who died in March, 2007 leaving behind his wife (Smt. Ved Kumari Sud), two sons (Shri Arun Sud and Shri Alok Sud) and two daughters (Dr. Abha Sood and Smt. Alka Sood). All the sons and daughters executed a Relinquishment Deed in 2007 in favour Smt. Ved Sud, whereby she became the absolute owner of the suit property No. 1.
28. While Shri Arun Sud and Smt Alka Sood have submitted that the mother died intestate and all her children are entitled to 25% share in her entire estate, Dr. Abha Sood and Shri Alok Sud have resisted this by asserting that Smt. Ved Sud had left the Will dated 18.01.2010 i.e. Ex. DW1/1.
29. The entire case for Partition and Probate thus hinges on the genuineness of the Will dated 18.01.2010 i.e., Smt. Ved Sud.
30. **My issue-wise findings are as under: -**



Issue No.1 in CS(OS) 2682/2012: -

“Whether the suit is maintainable? OPP”

31. It has been submitted by Smt. Abha Sood and Shri Arun Sud that the suit for Partition is not maintainable as the Probate case is still pending. Therefore, the proceedings in the suit are liable to be stayed under Section 10 of the Code of Civil procedure, 1908.

32. The nature of Probate proceedings was considered in Razia Begum vs. Sahebzadi Anwar Begum &Ors. (1959) 1 SCR 1111 and K.S. Abraham vs. Mrs. Chandy Rosamma&Ors. AIR 1989 Ker 167, wherein it has been observed that the actions relating to succession of an estate, are on different footing from a civil suit, the rationale substantially being that these proceedings have an efficacy *in rem* rather than *in personam*. Third party interest may not be in jeopardy *inter alia*, because of the application of the principles of *res judicata* in the latter category. Public citation, among other reasons is, therefore, carried out in Probate/Administrative Succession petitions.

33. In the case of Chiranjilal Shrilal Goenka through LRs. Vs. Jasjit Singh, (1993) 2 SCC 507, the Apex court observed as under:

“20...The Probate Court has been conferred with exclusive jurisdiction to grant probate of the Will of the deceased annexed to the petition (suit); on grant or refusal thereof, it has to preserve the original will produced before it. The grant of probate is final subject to appeal, if any, or revocation if made in terms of the provisions of the Succession Act. It is a judgement in rem and conclusive and binds not only the parties but also the



entire world, the award deprives the parties of statutory right of appeal provided under Section 299. Thus the necessary conclusion is that the Probate Court alone has exclusive jurisdiction and the Civil Court on original side or the Arbitrator does not get jurisdiction, even if consented to by the parties, to adjudicate upon the proof or validity of the Will propounded by the executrix, the appellant.”

34. The Apex Court in Ishwardas vs. Kanta Devi AIR 1954 SC 280 observed that the Court of Probate is primarily concerned with the question as to whether the document put forward as the last Will and Testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution, the Testator had sound disposing mind. It does not concern itself with the determination of the title of the properties.

35. Subsequently, in the case of Amrita vs Rakesh Kumar, 2016 SCC OnLine Pat 824, it was held that Probate proceedings and partition suits are completely different. The probate proceedings are summary in nature while detailed evidence is required to be led by the parties in the partition suit before a civil court to determine the question of unity of title and possession. **In the title suit, the legality and validity of the Will can also be considered by the civil court. It was further observed that the partition suit and the probate proceedings are distinct and title suit need not be stayed while the probate proceedings are pending.**

36. The Supreme Court in the case of Shamita Singh Vs. Rashmi Ahluwalia, (2020) 7 SCC 152, found that though the scope and the nature of a partition suit and a Probate petition are different, the outcome in a Probate



petition does have an impact on the judgement in a partition suit. Therefore, the Probate case was transferred to be tried along with the civil suit.

37. **In the present case the Partition suit and the Probate case have been tried together. From the above legal analysis, there remains no dispute with respect to the maintainability of the suit.**

38. **Issue is decided accordingly.**

Issue No.1 in CS(OS) 2682/2012: -

“Whether late Smt. Ved Sood had executed the Will dated 18.01.2010 and whether the said Will is valid? OPD”

Issue No.1 in TEST.CAS. 71/2016: -

“Whether Will dated 18.01.2010 is last validly executed Will of late Smt. Ved Kumari Sood?”

Mode of Execution of the Will dates 18.01.2010:

39. The first aspect for consideration is the execution of the Will dated 18.01.2010.

40. *Section 63 (a) & (b) of the Indian Succession Act, 1925* provides the requisites for the execution of a valid Will. It states that the testator must affix his signature on the Will and it shall appear that it was intended thereby to give effect to the writing as a Will.

41. *Section 63(c) of the Indian Succession Act, 1925* further provides that a Will must be attested by two or more witnesses, each of whom should have seen the testator sign or put his mark on the Will. The Will must be signed by the witnesses in the presence of the testator, but it is not necessary that more than one witness should be present at the same time. *Section 68 of the Indian Evidence Act, 1872* provides for manner of **proof of execution of a document** required by law to be attested, which provides that where a



document is required by the law to be attested, it shall not be used as evidence until at least one attesting witness has been called for proving its execution (if the attesting witness is available).

42. **DW1** Dr. Abha Sood, has deposed that Smt. Ved Sud, who is the sole owner of the suit properties had executed a Will dated 18.01.2010 Ex. DW1/1. which was attested by the two witnesses, whereby she bequeathed her estate in a manner indicated in the Will. She further deposed that the Will had been executed by Smt. Ved Sud in her complete and disposing power and sound mind without any influence or coercion whatsoever and was signed by the two attesting witnesses in her presence.

43. **DW3/1**, Sandeep Gupta, the attesting witness has corroborated her testimony and deposed that he and the other attesting witness Ms. Nirmal Kinra had signed the Will in the presence of Testatrix and each other. In his cross examination, he has explained that he went to visit Smt. Ved Sud while she was admitted in the hospital. DW1/Dr. Abha Sood and DW3/Alok Sud were already present in the hospital along with the other attesting witness i.e., Smt. Nirmal Kinra. Smt. Ved Sud had asked DW3/Alok Sud to get the Will prepared and the same was got prepared by him from outside the hospital. He deposed that contents of the Will were explained to Smt. Ved Sud who suggested some changes that were made by DW3/Alok Sud in his handwriting. The Will was signed by Smt. Ved Sud as well as by him and the second witness, Smt. Nirmal Kinra.

44. While DW1 Dr. Abha Sood has deposed about the execution of the Will and her testimony is corroborated by **DW3/1**, Sandeep Gupta, the attesting witness, but various challenges have been raised by **Shri. Arun Sud**.



45. **The first ground of challenge** is that Will dated 18.01.2010 merely had the name of first attesting witness, *Smt. Nirmal Kinra* and was *not signed by her*.

46. It is pertinent to note that DW1/Dr. Abha Sood and DW3/Alok Sud as well as DW3/1A/Sandeep Gupta, the attesting witness, in their respective testimony have categorically deposed that the signatures of Smt. Nirmal Kinra are at Point 'B'. None of the witnesses were given any suggestion that the Will did not bear the signatures of Smt. Nirmal Kinra. It is only at the stage of arguments that it has been argued that the Will does not have the signatures of Smt. Nirmal Kinra. It is observed that the signatures that appear on the Will are the full name of Smt. Nirmal Kinra. **Merely because her signatures are by way of full name, no inference can be drawn that they are not her signatures, especially when no such suggestion was given to any of the witnesses.**

47. The testimony of all the three witnesses about the Will having the signatures of Smt. Nirmal Kinra was never questioned or challenged. Since no suggestion whatsoever given to any of the witnesses that the writing at Point 'B' in the Will was not the signatures of Nirmal Kinra but merely a mention of her name, cannot be agitated now. There being no challenge in the testimony of the witnesses, it is hereby held that Will had the signatures of both the witnesses.

48. **The second ground of challenge** raised by Arun Sud to the validity of the Will dated 18.01.2010 Ex DW1/1 is that two Will had *not been signed on its first page* by Smt. Ved Kumari.

49. In Raj Bala vs State (NCT of Delhi), 2024 SCC OnLine Del 1633 it was observed that is not necessary that the documents be signed on each



page, though it is a usual practice for the person executing a document to sign each page to obviate any further challenge.

50. In the present case, the Will is typed on front and back side of the same page. Common sense tells that insistence on signatures on each page is to ensure that no page is subsequently changed. However, when the document is a single page, then signatures on back side would also suffice as the document page cannot be substituted. Therefore, this challenge is without merit.

51. The **third ground of challenge** raised by PW1/Arun Sud is that the signatures of the testatrix on the Will are not genuine but are Forged/fabricated. However, neither has he expanded this assertion any further nor has he led any evidence to corroborate his assertion.

52. The Relinquishment Deed of 2007 executed by the parties in favour of their mother Late Smt. Ved Kumari Sud, is an admitted document which has the signature of the testatrix. A bare comparison of the signatures on this document is compared with the signatures on the Will, it is evident that except that the signatures on the Will are shaky, they are signed by the same person. This shakiness can only be attributed to the old age and poor health of the Testator.

53. PW1/Arun Sud has not been able to establish that the signatures on the Will, were not of the testatrix.

54. The **fourth ground of challenge** raised by PW1/Arun Sud is the execution of the Will by Smt. Ved Sud, who was 80 years old on 18.01.2010 i.e., barely 12 days prior to her death on 30.01.2010.

55. The Supreme Court in the case of Sridevi and Others vs Jayaraja Shetty and Others (2005) 2 SCC 784 observed that the death of a testator



after 15 days of execution of a Will could not in itself be a suspicious circumstance particularly when the sound state of the health of the testator and his physical and mental capability stands proved.

56. Therefore, the execution of the alleged Will close to her demise, merely raises a caution to scrutinize the surrounding circumstances closely to ascertain the genuineness of the Will. The most significant aspect which assumes importance is her physical and mental condition.

57. The **fifth ground of challenge** raised by Arun Sud is the Mental and Physical health of the testator affecting her mental capacity to execute the Will. *PW1 Arun Sud* has challenged the authenticity of the Will on the grounds viz., (i) *Smt. Ved Sud was critically ill and not medically sound to execute the Will*, and (ii) *no certificate of the Doctor or the medical records have been filed to prove her medical condition*.

58. *PW1 Arun Sud* to substantiate his plea of medical condition of the testatrix/*Smt. Ved Sud*, has deposed that she was suffering from Lung Cancer and was admitted in ICU of the hospital on 13.01.2010 and her condition was bad. He has stated that she was not even able to recognise him when he arrived on 22.01.2010. After his arrival, *Smt. Ved Sud* remained in the ICU from 22.01.2010 to 30.01.2010 in a critical condition. She was inarticulate in making any statement and there is not even a bleak possibility of her being in a position to sign a Will.

59. Admittedly, Late *Smt. Ved Sud* remained admitted in the hospital from 13.01.2010 to 30.01.2010. *DW1 Dr. Abha Sood* in her cross-examination has stated that her mother Late *Smt. Ved Sud* though was 80 years old at the time of her death, was not suffering from any serious ailment, except a fracture and breathing problem. Due to breathlessness, her



mother was admitted in the Golden Jaipur Hospital on 13.01.2010 where she died on 30.01.2010. Smt. Ved Sud was under the supervision of a General Physician and Chest Physician and was referred to Respiratory Department. Smt. Ved Sud died because of *Cardiac Respiratory Arrest*.

60. The testimony of Dr. Abha Sood is corroborated by *DW3 Alok Sud*, the brother, who has also deposed that their mother was admitted in the hospital from 13.01.2010 due to breathing problem and was talking properly though she remained as an inpatient in the Hospital on the advice of the Doctors.

61. From the testimony of DW1/Abha Sood and DW3/Alok Sud, it is apparent that they were present with their mother when she was admitted in the hospital on 13.01.2010 and it was Abha Sood who interacted with the doctors regarding her mother's condition. Therefore, DW1 and DW3 are the best persons to prove the physical and mental health of Smt. Ved Sud. This is so as Shri Arun Sud was a resident of US and as per his own testimony he came on 22.01.2010 and met his mother in the hospital.

62. That the testatrix was in sound mental health is also corroborated by the testimony of DW3/1 Sh. Sandeep Gupta, the attesting witness who has deposed that when *he went to visit Smt. Ved Sud, she was in good health and had a talk with Sandeep. When he enquired about her health to which she replied that she is fine.* There is no serious challenge to this testimony.

63. There is no rebuttal to the testimony of PW1/Arun Sud that from 22.01.2010 till 30.01.2010, Smt. Ved Sud remained in ICU and that she was incoherent or that she suffered from lung cancer. However, as has been explained by DW1/Abha Sood and DW3 Alok Sud, that the testatrix was



admitted in the ICU but she was shifted to the room after one day, to which there is no denial by PW-1 Arun Sud.

64. Significantly, the most relevant evidence to corroborate the medical condition of the Testatrix was to produce the medical records, but pertinently, neither has the medical documents produced nor any doctor has been examined to depose about her medical condition.

65. Thus, one has to rely on the oral testimony of the parties from where it emerges that though Smt. Ved Sud was admitted in the hospital but she was not unconscious or heavily sedated throughout. Rather, it emerges from the testimony of the witnesses that she was in her full senses on 18.01.2020 and was able to communicate well when she got the Will prepared. It is in fact, understandable that realizing her precarious health, she thought of executing the Will for distribution of her properties amongst her children according to her sense of their needs and how she was served by them. Her condition may have deteriorated subsequently and she may have been in ICU after the said date, but there is no evidence led by either party that on the date of execution of the Will, she was incapable of giving proper instructions.

66. To say that because of her prolonged admission in the hospital, her condition was serious and precarious all throughout her admission, may not be the correct assumption. Therefore, it may be concluded that she was in frail health but there is no evidence to conclude that on 18.01.2010 when she gave instructions to prepare the Will, she was not in fit mental state.

67. Thus, while the testatrix was in deteriorating health condition and she may have died barely 12 days of executing the Will dated 18.01.2010, there is no coherent evidence of her failed mental faculties.



68. The **sixth ground of challenge** raised by Shri Arun Sud is that there were unverified interpolations in the Will reflecting that Will dated 18.01.2010 was not the last expression of the intent of the Testatrix but was a manipulated document.

69. Now the situation that prevailed in the hospital on the date of the execution of the Will on 18.01.2010, may be considered. DW1 Dr. Abha Sood in her cross-examination, has explained that while admitted in the Hospital, her mother formed an idea of executing the Will, which she conveyed to her and to her brother Shri Alok Sud. They enquired from her mother as to what was to be incorporated in the Will. On her instructions, the Will dated 18.01.2010 Ex. DW1/1 was got typed by Shri Alok Sud.

70. DW-3 Alok Sud has also deposed on similar lines and corroborated that Smt. Ved Sud expressed a desire to execute the Will to him and Abha Sood in the hospital. Smt. Ved Sud narrated the manner in which she wanted the moveable and immoveable properties to be distributed. The discussion had continued for about 15-20 minutes. Though he told his mother that there was no urgency for execution of the Will, she insisted on the same.

71. To honour the wish of the Testatrix, DW1/Dr. Abha Sood, called Smt. Nirmal Kinra her neighbour, while DW3 Alok Sud called Shri Sandeep Gupta, colleague and friend to be the second attesting witness to the Will.

72. It is evident that Abha Sood and Shri Alok Sud had participated in the preparation of the Will dated 18.01.2020, which is quite understandable and natural as Arun Sud and Smt. Alka Sood are both residing in the United States of America, while DW1/Dr. Abha Sood and DW3/Alok Sud being the residents of India, were with their mother in the hospital. Thus, their



involvement in the preparation of the Will cannot be considered as a suspicious circumstance; rather their presence was quite natural.

73. DW1/Dr. Abha Sood, DW3/Alok Sud and DW3/1 Sandeep Gupta, attesting witness have deposed that the contents were told by the testatrix and the Will dated 18.01.2010 was got prepared by DW3/Alok Sud on her instructions, as understood by him.

74. DW3/Alok Sud has further deposed that in order to give effect to the desire of the mother, he got the draft of the Will prepared through a Deed Writer from the nearby Internet Cafe., which took him about 15 minutes and thereafter, he returned to the hospital. DW3/Alok Sud further clarified that he explained the contents of the Will to his mother which took him about 5-7 minutes. Smt. Ved Sud suggested certain changes which were incorporated by him in his own handwriting after which the Will was signed by Smt. Ved Sud and also by the two witnesses in his presence.

75. There are various interpolations, additions and corrections in the Will, whereby the distribution of both the suit properties to four children of Smt. Ved Sud has been materially altered, from what was typed in the first instance.

76. The relevant part of the Will reads as under:

“4. I hereby give, device and bequeath that after my demise entire basement with all rights of fixtures and fittings at the property bearing plot no. D-55 Anand Niketan New Delhi 10021 shall go and devolve absolutely and forever in favour of my (elder son, Arun Sud and) younger Daughter Alka Sood who (they) shall get it mutated, substituted and transferred in her name in the records of all concerned authorities on the basis of this will or its certified true copy.



5. Out of the Bank/post office accounts/ NSC in my name Having balance of about Rs.40 lakhs after paying any liability/security deposits and keeping Rs.12 LAKH as gift on the occasion of marriage of my grand children (Rs3lakh each for Samuya & Surbhi Rs 11 lakh each for others-Anchit, Arpit, Bhavya, Deepika, Mohit and Sabhya) balance to be given to my elder son Arun sud (and younger daughter Alka Sood equally {Bold portions- written by hand}).”

77. From the contents of the Will it is apparent that while in paragraph 4 of the typed Will, it was indicated that the entire basement with all the rights, fittings and fixtures of suit property No. 1 was to devolve upon the younger daughter, Smt. Alka Sood, but insertion has been made in pen to add “*elder son, Arun Sud*” thereby reducing the share of Smt. Alka Sood in the basement of suit property No. 1. Likewise, in Paragraph-5 of the Will, the testatrix/Smt. Ved Sud mentioned about all her money in the accounts and securities to be bequeathed to her grandchildren as a gift, she indicated that the balance left after giving the specified amounts to the grandchildren, the same would go to her elder son, Arun Sud but thereafter, it has been written in pen “*and younger daughter, Alka Sood equally*”. This again changes the extent of distribution of money from going exclusively to Arun Sud to be shared by him with Alka Sood.

78. These interpolations clearly change the contents of the typed Will and also alter the shares of the beneficiaries materially. Had the testatrix wanted such changes, there was no reason why the Will could not be typed in the first instance according to her wishes and why the Will could not be typed again or at least the interpolations could be countersigned by her.



79. With these interpolations, the onus is heavy on DW1/Dr. Abha Sood and DW3/Alok Sud to explain that these interpolations were, in fact, made at the instance of the testatrix. Significantly, DW1/Abha Sood in her cross examination has stated that she *cannot give the name of the person who made the additions/alterations in the will*. Despite being present when the Will was executed, the fact DW1/Abha Sood is unaware about the person who made the interpolations, creates a doubt about on whose instructions were the interpolations made in the Will.

80. This becomes significant in the light of the frail health of the testatrix. It needs to be mentioned that from the testimony of the parties it has emerged that essentially all four siblings had good relations with the deceased testatrix which is evident from the fact all the children had voluntarily relinquished their respective shares in in suit property No. 1 in favour of the testatrix that demise of their father Shri Lalit Prasad Sud.

81. In Neelam Singh and ors vs Dr. Sudha Sinha and ors, 2022 SCC OnLine Jhar 1231, it was observed that an onerous responsibility on the probate court lies to be on guard against any manufactured Will and at the same time to remain the conscience keeper of the testator who does not remain in his mortal form before the court. However, the *degree of proof and appreciation of evidence is based on preponderance of probability depending on the evidence on record taken as a whole*.

82. It thus, becomes pertinent to examine the suspicious circumstances of in the present case on the touchstone of “**preponderance of probabilities**”.

83. There is no cogent evidence to hold that the contents of the Will were changed in accordance with her instructions. The only irresistible conclusion that can be drawn is that the testatrix indeed intended to execute the Will in



the twilight of her life, but the draft that got prepared was not to her satisfaction and she wanted changes apparently to equalize the shares of her children which though, inserted but it cannot be said that these interpolations were final expression of her last wish. She indeed made an endeavour to execute her Will but unfortunately, was unable to complete her task and the changes suggested by her, could not be finalized.

84. In Kiran D. Patki vs State, 2024 SCC OnLine Del 2531 it was held that a Will that is *replete with alterations that were not counter-signed by the testatrix, to accept the WILL as genuine would require a leap of faith.*

85. **It has to be thus, concluded on the basis of evidence that Will Dated 18.01.2010 Ex. DW1/1 is not the finalized version of the last expression of intent of the testatrix and cannot be given effect. There being no final Will, the Testatrix, she is held to have died intestate and her property has to necessarily devolve according to the rules of succession.**

86. The Issues are answered accordingly.

Issue No.2 in TEST.CAS. 71/2016: -

“Relief.”

87. In view of the discussions on the issues as discussed above, it is held that the Will dated 18.01.2010, Ex. DW1/1 has not been proved to be the last expression of the testatrix, Smt. Ved Sud, prepared and changed on her instructions.

88. Therefore, the Probate Petition is hereby dismissed.

Issue No. 4 in CS(OS) 2682/2012: -

“Relief.”



89. Since the Will has not been held to be genuine, all the parties/heirs of Smt. Ved Sud are held to be entitled to 1/4th share each in both the suit properties.

90. In view of above, the Preliminary Decree is hereby passed, accordingly.

Issue No. 3 in CS(OS) 2682/2012: -

“Whether the plaintiff is entitled for rendition of the complete accounts of the suit properties, consisting of its rental income and its interest/dividend income as prayed for in the present suit? OPP.”

&

CS (OS) 2682/2012 & I.As. 263/2019, 264/2019, 18194/2019, 20741/2022

91. PW1/Arun Sud has also claimed that Rendition of Accounts in respect of rental income being generated from both the suit properties.

92. List for consideration of Rendition of Accounts and ascertainment of mode of partition of both the suit properties by metes and bounds for the Final Decree of partition, on 15.10.2024.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 29, 2024

S.Sharma