



2025:DHC:9205-DB



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

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Judgment reserved on: 06.10.2025

Judgment pronounced on: 17.10.2025

+ **FAO (OS) 44/2023, CM APPL. 62495/2024, CM APPL. 21476/2025 and CM APPL. 37702/2025**

SANJEEV CHADHA

..... Appellant

Through: Mr. S.C. Anand, Advocate

versus

D.P.SACHDEVA AND OTHERS

..... Respondents

Through: Mr. Arun Singh and Mr. Vikas Singh, Advocates for Respondent no. 2, 3, 4 & 6

Ms. Sumati Anand and Mr. Vaibhav Arora, Advocates for R-5(b) to R-5(e)

Ms. Pavitra Kaur and Ms. Shreya Mishra, Advocates for R-7

Mr. Ayush Anand and Mr. Chetanya Baweja, Advocates for Applicant in CM APPL. No.37702/2025

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant [Respondent No.5(a) before the learned Single Judge] assails the correctness of judgement



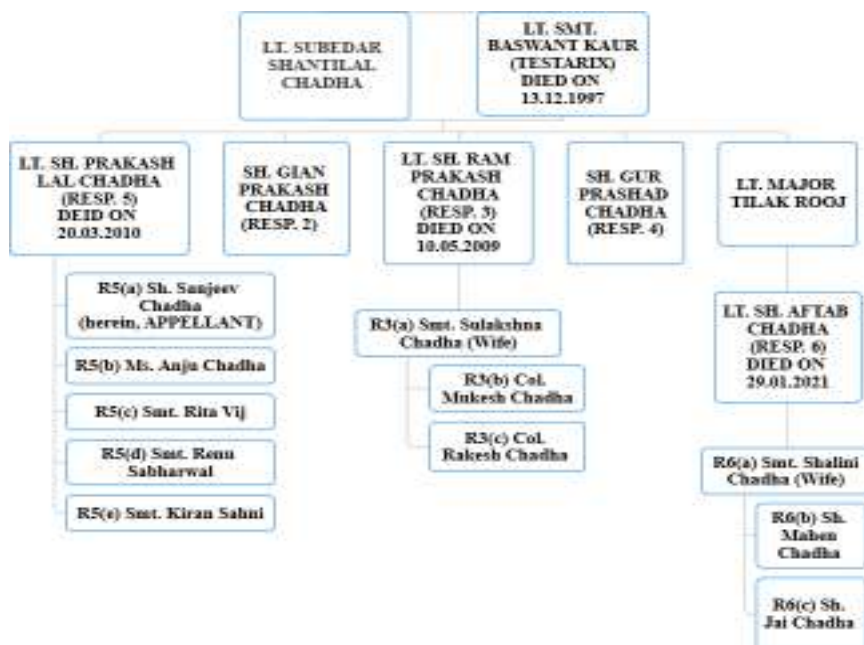
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dated 26.09.2022 as amended on 06.10.2022, passed by the learned Single Judge of this Court in Testamentary Case No. 28/2005 [here in after referred to as the 'Impugned Judgment'], whereby Sh. D.P. Sachdeva, the Respondent No. 1 [Executor/Petitioner before the learned Single Judge], was granted probate/letters of administration in respect of the Registered Will dated 20.05.1993 executed by the late Smt. Basant Kaur, bequeathing her properties in favour of her three sons and one grand-son while excluding one of her sons late Sh. Prakash Lal Chadha, the Appellant's father [Respondent No. 5 before the learned Single Judge].

FACTUAL MATRIX

2. In order to comprehend issues involved in the present case, genealogy of the family along with brief facts are required to be noticed. For the ease of reference, a genealogical chart of the family is set out hereinbelow:



Signature Not Verified

Signed By: SAVITA

PASRICHA

Signing Date: 17.10.2025

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3. A perusal of the record reflects that, Lt. Smt. Basant Kaur, executed a registered Will on 20.05.1993, appointing D.P. Sachdeva as the Executor. She died on 13.12.1997, leaving behind four sons and a grandson. The Will purportedly is with respect to two immovable properties she owned, House No. A-299, Defence Colony, New Delhi, and a plot at Sainik Co-operative Society, Dehradun, along with limited movable assets such as bank deposits and gold.

4. Initially Respondent No. 5 filed Succession Case No. 106/1999. wherein, one attesting witness namely Major A.N. Punj was examined but the petition was dismissed for non-impleadment of the Executor. Thereafter, the Executor filed the Probate Case No. 28/2005. Respondents 2 to 4 filed their no-objection and provided deed of compromise, whereas objections were raised by Respondent 6 and subsequently by the legal heirs of Respondent 5, primarily disputed the validity of the Will.

5. In this Probate Petition, one of the attesting witnesses, Sh. M.L. Sharma was examined as PW-3 while giving opportunity to the Respondents to cross-examine the witnesses. Thereby, through the impugned judgment, the probate/letter of administration was granted in favour of Respondent No. 1 [Executor].

CONTENTIONS FOR THE APPELLANT:

6. The learned counsel representing the Appellant has also filed written submissions while detailing his submissions. The submissions are as under:



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- (i) The Probate Petition was filed after a period of seven years from the date of death of the Testator. While relying upon the judgment passed in ***Ramesh Nivrutti Bhagwat vs Dr. Surendra Manohar Parakhe***¹, it was contended that the Petition was filed beyond the period of limitation.
- (ii) The explanation of Sh. D.P. Sachdeva that he was not aware of the Will is factually incorrect because the Will was drafted on his instructions.
- (iii) The Will bears thumb impression whereas the Testatrix used to sign other bank documents. There is no explanation why she did not sign the Will.
- (iv) The Will is in English language, which the Testatrix did not understand.
- (v) The Testatrix was a 1947 Refugee from Pakistan surviving on a meager pension, hence the subject properties were in fact Joint Hindu Family properties in her name as a female head of the Family.
- (vi) Serious prejudice has been caused to the Respondents on account of delay in filing the petition. One of the attesting witness Major A.N. Punj died before the evidence stage in the Probate Petition.
- (vii) Sh. D.P. Sachdeva is not entitled to take benefit of Section 14 of the Limitation Act and thus has effectively renounced executorship under Section 231 of the Indian Succession Act, 1925 [hereinafter referred to as I.S. Act].

¹ (2020) 17 SCC 284



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CONTENTIONS FOR THE RESPONDENTS:

7. *Per contra*, learned counsel for the Respondents contends that the appeal is not maintainable as the Appellant did not file a written statement or lead evidence in the original proceedings despite repeated opportunities. While relying upon the judgment passed in ***Kunvarjeet Singh Khandpur v. Kirandeep Kaur***²; ***Sameer Kapoor & Anr. vs. State through Sub-Division Magistrate, South New Delhi and Others***³; and ***Ramesh Nivrutti Bhagwat v. Dr. Surendra Manohar Parak*** (*supra*), it was contended that the issue of limitation is misconceived; the right to apply for probate is a continuous right, exercisable any time after the death of the Testator. The learned counsel for the Respondent further submits that the Will was duly registered and proved through the testimony of one of the attesting witness (PW-3), the Executor (PW-2) and the Clerk from the Sub-Registrar's Office (PW-1).

ANALYSIS & FINDINGS

8. This Court has considered the submissions advanced by learned counsel for the parties at length and with their able assistance, perused the paper book and the record of the suit.

9. First of all, the submission of learned counsel for the Appellant with regard to the period of limitation for filing a Probate Petition is required to be examined. Attention of this Bench has not been drawn to any specific Article of the Schedule attached to the Limitation Act

² (2008) 8 SCC 463

³ (2020) 12 SCC 480



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providing for a specific period of limitation to file petition seeking Probate/Letter of Administration. Hence, the Residuary Provision of Article 137 of the Limitation Act, 1963 can be applied. It provides for limitation of three years, which will begin to run when the right to apply accrues.

10. The Supreme Court in ***Kunvarjeet Singh Khandpur vs. Kirandeept Kaur and Anrs.*** (*supra*), has held that the act prescribes no period of limitation for grant of probate and letter of administration, and thus residuary provision as under Article 137 of the Limitation Act, 1963 applies for the grant of letters of administration. The court further observed that, the right to apply would accrue when it becomes necessary to apply which may not necessarily be within 3 years from the death of the deceased death, and such right is a continuous right which can be exercised any time after the death of the deceased.

11. Subsequently, again the matter was considered by the Supreme Court in ***Sameer Kapoor*** (*supra*), where the Court held that that it is for the Court to grant permission to perform a legal duty which can be exercise at any time after the death of the deceased as long as the right to do such so survives.

12. In ***Ramesh Nivrutti Bhagwat*** (*supra*), the Supreme Court has examined the period of limitation in the context of application for revocation of Letter of Administration. In that context, the Supreme Court despite noticing ***Kunvarjeet Singh Khandpur*** case and ***Sameer Kapoor*** case held that revocation of letter of administration could be



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filed within a period of three years from the date of its grant.

13. In the present case, the petition is for grant of probate/letter of administration, hence, ***Ramesh Nivrutti Bhagwat*** case is not applicable.

14. As per Section 68 of the Indian Evidence Act, 1872 (Section 69 of the Bhartiya Sakshya Adhiniyam, 2023) a Will is required to be proved by examining at least one of the attesting witnesses. In this case, Sh. M.L. Sharma, who had not only scribed the Will, but has also attested the will, as a attesting witness, was examined as PW-3. Despite opportunity to cross-examine the witness, learned counsel representing the Respondent failed to impeach his credibility. PW-3 has duly proved the execution of the will in accordance with the requirements of Section 68 of the Indian Evidence Act and has further established that the Will was executed in conformity with the provisions of the Section 63 of the I.S. Act.

15. Once the period of limitation will not begin to run from the date of death of the Testator as sought to be projected by the learned counsel representing the Appellant, the major part of the arguments of learned counsel representing the Appellant with regard to Executors failure to explain his awareness of the Will and applicability of Section 14 of the Limitation Act, 1963 do not survive.

16. The Testatrix has affixed her impression on all pages of the Will, which is spread over five printed pages. No evidence has been adduced by the Appellant to prove that Smt. Basant Kaur did not affix/append her thumb impression on the document. She also



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appended her thumb impression in the office of the Sub-Registrar at the time of registration of the Will on 20.05.1993 and her photograph is affixed thereto. It has come on record that owing to her advanced age, she had stopped signing and had begun using her thumb impression instead. Section 63 of the Indian Succession Act, 1925 expressly permits the testator to either sign or affix his or her mark on the will. Moreover, when Sh. M.L. Sharma, the attesting witness, appeared in evidence, his explanation was not sought by learned counsel representing the Appellant. Hence, the submissions lack substance.

17. Similarly, Sh. M.L. Sharma has categorically deposed that he explained the contents of the Will to the Testatrix, and that the same was executed in accordance with her wishes. This fact has been stated in detail by Sh. M.L. Sharma, however, learned counsel representing the Respondent therein failed to impeach correctness of the statement of attesting witness. Hence, the execution of the Will in English is not sufficient to discard the registered Will.

18. Similarly, no evidence had been produced by the Appellant to prove that the properties bequeathed by the Testatrix were joint Hindu Family properties. Attention of the Court has not been drawn to cogent evidence produced by the Appellant in this regard.

19. The last submission of the Appellant's Counsel is unsubstantiated because in the earlier petition filed by Sh. Prakash Lal, the first attesting witness, Lt. Major A.N. Punj, was duly examined while giving opportunity for his cross-examination. In subsequent testamentary case proceedings, the other attesting witness Sh. M.L. Sharma, was also



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examined and cross-examined. Hence, the Appellant has failed to demonstrate any prejudice having been caused on account of the fact that the Petition was filed after period of seven years from the date of death.

20. Keeping in view the aforesaid discussion, finding no substance the present Appeal, along with the pending applications, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
OCTOBER 17, 2025/sp/dev