



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

% *Judgment Reserved on: 16.12.2025*
Judgment pronounced on: 20.12.2025

+ **FAO 48/2014**

JAWAHARLAL MALHOTRA & ANRAppellants

Through: Mr. Rajeev Saxena, Sr. Advocate
along with Mr. K.K. Srivastava, Ms.
Megha Saxena, Ms. Shreya
Bhatnagar, Advocates.

versus

STATE & ORS

.....Respondents

Through: Ms. Shobhana Takiar along with Mr.
Kuljeet Singh and Mr. Shivam Takiar,
Advocates.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This is an appeal under Section 299 of the Indian Succession Act, 1925 (the ISA) filed by respondent no. 4, 10 & 11 in Probate Case no. 20 of 2003 on the file of Learned ADJ, Central District, Delhi aggrieved by the order dated 29.10.2013 by which the probate petition was allowed and a letter of administration granted to the petitioner. Respondent no. 4 and 10 died during the pendency of the proceedings and hence their legal



representatives/heirs have been brought on record.

2. In this appeal, unless otherwise specified, the parties will be referred to as described in the original petition.

3. The facts relevant to the present appeal are as follow: Late Jugal Kishore, son of late Lajja Ram, was the owner of property bearing no. 2271, Gali No. 69, Naiwala, Karol Bagh, New Delhi. He died on 04.01.1997. Jugal Kishore was survived by four sons, i.e., respondents 3 to 5 and the original petitioner, namely, Ajudhya Prakash and three daughters, that is, respondents 6 to 8.

3.1. The probate petition was instituted on 02.06.1998 by one of his sons, Ajudhya Prakash, alleging that his father had executed a Will dated 18.09.1995, which was registered on 05.02.1996 before the Sub-Registrar Office, Delhi. He claimed to be a beneficiary under the aforesaid Will and asserted that the Will had been executed by the testator in a sound and disposing state of mind and in accordance with law.

3.2. During the pendency of the proceedings, the original



petitioner, Ajudhya Prakash, died and hence by order dated 20.01.2001, respondent no. 9, his son, was ordered to be transposed as the petitioner by the trial court.

4. Respondent no. 4 along with his sons respondent nos. 10 and 11, *vide* their reply contended that the Will dated 18.09.1995 was forged and fabricated and that it had not been executed by late Jugal Kishore, who was about 90 years of age, suffering from several ailments, and was not in a sound and disposing state of mind at the relevant time. The respondents further contended that late Jugal Kishore had earlier executed a registered Will dated 22.04.1994 in favour of Prem Lata, wife of respondent no. 4 and their sons, which represented the true testamentary intention of the former. It was contended that the property bequeathed to them had been mutated in their favour.

4.1. It was further contended that execution of the Will dated 18.09.1995 was surrounded by several suspicious circumstances, including the strained relations between Jugal Kishore and the



petitioner when the Will is alleged to have come into existence. Jugal Kishore had issued a “Pharkhati” disowning the petitioner, which was published in a daily newspaper on 29.05.1987. Jugal Kishore had issued a legal notice dated 12.10.1987 to the petitioner calling upon him to vacate the portion of the property in his occupation. It was also contended that Jugal Kishore had moved applications dated 28.09.1995 and 07.08.1996 in a civil suit pending before the court of a Civil Judge at Delhi, alleging violation of an injunction order by the petitioner and his son Madan Mohan and that the former had also lodged a complaint dated 16.07.1996 with the Station House Officer, Karol Bagh, against the latter.

4.2 It was further contended that on 02.12.1996, Jugal Kishore had instituted a civil suit against the petitioner seeking possession and recovery of damages. According to the respondents, had Jugal Kishore executed the Will relied upon by the petitioner, he would not have initiated the aforesaid



proceedings, issued the notice to vacate, or filed a suit for possession against the latter.

4.3. The respondents also contended that the Will was drafted and attested by advocates who had been appearing against Jugal Kishore and was registered at a Sub Registrar office far away from his residence, thereby casting serious doubts on its genuineness. It was contended that as per the Will propounded by the petitioner, a portion alleged to be in the occupation of one M. B. Singh was shown as bequeathed to the son of the petitioner, namely, Madan Mohan. In fact Jugal Kishore had instituted a suit against the aforesaid M.B. Singh and, after the demise of the latter, had obtained possession of the said portion through court. Thereafter, the said portion had been let out by Jugal Kishore to M s N. N. and Company in the year 1993 as per a written rental agreement, which agreement had been placed on record in the earlier proceedings. Hence, M. B. Singh was not in possession of any portion of the premises on the date of the execution of the alleged Will and that



the recitals therein to the said effect are factually incorrect, which is also a ground to suspect the Will.

4.4. The signatures and thumb impression appearing on the Will were disputed and contended to be forged and fabricated. The respondents contended that in the written statement filed by the petitioner in an earlier suit, it was pleaded that the latter had contributed 50% of the consideration for purchase of the property. This assertion was specifically denied by Jugal Kishore in his replication dated 30.05.1996, filed much after the execution of the alleged Will.

4.5. Respondent no. 4 and his sons, i.e. respondent no. 12 & 13 filed reply contending that the Will relied on by the petitioner was not a valid or legally enforceable testament. According to them, the property in question had been acquired by Jugal Kishore out of the custodian funds belonging to the family members and therefore, Jugal Kishore did not have unfettered rights to dispose of the same by way of a Will.



4.6. It was further contended that the alleged Will dated 18.09.1995, stated to have been registered on 05.02.1996, was not executed or registered in accordance with law. The petition has been filed concealing material facts relating to disownment of the petitioner by Jugal Kishore, prior disputes, and pending litigation concerning the property in question. It was contended that such concealment vitiated the probate proceedings.

4.7. Respondent no. 5 & his son respondent no. 14 filed their objection disputing the execution of the Will. Jugal Kishore had never executed any Will in favour of the petitioner and that the document relied on was forged and fabricated with the intent to deprive the other legal heirs of their lawful rights. It was further contended that Jugal Kishore during his lifetime had disowned and disinherited the petitioner from all his movable and immovable properties by way of a public notice published in a daily newspaper named “Statesman” in the year 1987, which disownment was never withdrawn till his death and that in view of



such disownment, there was no occasion for execution of any Will in favour of the petitioner.

5. In the rejoinder filed to the objection of respondents no. 4, 10 & 11 and in the replication to the objections raised in the written statement of respondent no. 5 & 14, the petitioner denied all the contentions of forgery, fabrication, lack of testamentary capacity, and suspicious circumstances, and asserted that Jugal Kishore was in a sound and disposing state of mind at the time of execution of the Will. The plea regarding existence of the earlier Wills dated 18.11.1986 & 22.04.1994 was specifically denied and it was stated that the said documents were forged and suspicious, having excluded the natural heirs from the bequest. The petitioner also denied the contention that Jugal Kishore had issued any “*Pharkhati*” disowning him or that any such notice was published in the newspaper. With respect to the pending and prior litigations, it was contended that some suits were either withdrawn or dismissed, while others were not instituted with the consent or



instructions of Jugal Kishore, who was seriously ill at the relevant time.

6. Respondents no. 6 and 8, the daughters of Jugal Kishore remained *ex-parte*. Respondent no. 7, another daughter, died during the pendency of the proceedings and so her legal representatives were impleaded, who adopted the reply filed by respondents no. 4, 10 and 11.

7. On completion of pleadings, necessary issues were raised by the trial court. The parties went to trial on the basis of the above said pleadings. On behalf of the petitioner, PW-1 to PW-4 were examined, and exhibits PW-4/1 to PW-4/2, PW-1/R-1 to PW-1/R-8&PW-3/A were marked. The respondents/objectors examined RW-1 to RW-3 and exhibits RW-1/1 to RW-1/22 and RW-2/1 to RW-2/28 were marked.

8. On a consideration of the oral and documentary evidence and after hearing both sides, the trial court allowed the petition. Aggrieved, respondents no. 4, 10 and 11 have come up in appeal.



9. It was submitted by the learned senior counsel appearing for the appellants/respondents no. 4, 10 and 11/ objectors (hereinafter referred to as the respondents) that there are several suspicious circumstances surrounding the execution of the Will which have not been cleared by the petitioner and hence, the trial court went wrong in allowing the petition for probate. *Per contra*, it was submitted by the learned counsel appearing for the petitioner that there are no suspicious circumstances surrounding the execution of the Will and all those which have been raised by the respondents have been clarified in the examination of the petitioner's witnesses. The testimony of PW-1 and the testimony of the attesting witnesses examined as PW-4 has not been discredited in any way and, therefore, the trial court was right in allowing the petition. There is no infirmity calling for an interference by this Court, goes the argument.

10. Heard both sides and perused the materials on record.

11. Before going into the merits of the case, I briefly refer to



the evidence on record. PW-1, the substituted petitioner, in his chief examination reiterated his case in the petition. PW-1 when cross examined deposed that he has been residing at property No. 2271/68-69, Naiwala, Karol Bagh, New Delhi, for over 40 years and that relations between his father (the original petitioner) and his grandfather (Jugal Kishore) were cordial. He denied any knowledge of the public notice of disinheritance or '*Pharkhatis*'. PW1 admitted that his grandmother executed a Will dated 23.09.1973 in favour of his father but denied the authenticity of the subsequent Will dated 18.11.1986 executed by her. He disputed the genuineness of the Will dated 22.04.1994 in favour of Prem Lata and her sons, stating that it was forged. PW-1 admitted that Advocate Sunil Mittal (PW-4), his father's counsel, is the second attesting witness to the Will. PW-1 confirmed filing suits for possession and declaration against family members and the objectors, including objections to mutations with DDA.

11.1. PW-2, Record Clerk, Sub Registrar, Seelampur,



deposed that the Will dated 18.09.1995 of late Jugal Kishore Malhotra was registered on 05.02.1996 vide registration no. 5042, though the office copy could not be produced as the record was not traceable.

11.2. PW-3, Clerk, office of Sub Registrar IV, Nandnagri, Delhi, produced the Peshi Register for the period 09.01.1996 to 07.02.1996 and deposed that the Will dated 05.02.1996 of late J.K. Malhotra was registered vide registration no. 5048 dated 05.02.1996. He deposed that the office copy of the Will was not traceable as it had not been incorporated in the register concerned. He confirmed that the particulars of registration on the original Will marked X tallied with the entries in the Peshi Register, the relevant extract of which was marked as Ex. PW-3/A.

11.3. PW-4, Advocate Sunil Mittal, one of the attesting witnesses, deposed that on receiving a telephonic request from Ajodhya Prakash, (the original petitioner) he reached the office of Sub Registrar, Seelampur, where late Jugal Kishore Malhotra,



Ajodhya Prakash, and one Tara Dutt were present. He deposed that by the time he reached the office, the Will had already been prepared and signed by Jugal Kishore and the other attesting witness, namely, Tara Dutt. The copy of the Will was marked as Ex. PW-4/1. He admitted that he had filed the present probate petition and attested its verification, which was marked as Ex. PW-4/2. PW-4 admitted that he had been appearing as counsel for Ajodhya Prakash and Madan Mohan Malhotra but denied any collusion, manipulation, or fabrication of the Will. He denied that Tara Dutt was his clerk or that Advocate Manoj Kumar, who drafted the Will, was his junior. According to him, although one Manoj Kumar had earlier worked as his junior, the said person was different from the advocate who drafted the Will and signed it. PW-4 further deposed that the photograph affixed on the Will was of Jugal Kishore and that the person whose photograph was affixed had signed the Will at points A and B in his presence. He denied noticing any discrepancy in the signatures of Jugal Kishore on the



Will.

11.4. PW-4 further denied the suggestions that the Will was forged; that registration was deliberately conducted at Sub Registrar, Seelampur to facilitate manipulation; or that any record was removed or tampered with after registration. PW-4 denied any knowledge of the Will dated 22.04.1994 or of any disinheritance of Ajodhya Prakash by public notice. He maintained that he was never counsel for late Jugal Kishore and denied all allegations of conspiracy, forgery, or false deposition.

12. Respondent no. 10, the son of respondent no. 4 was examined as RW-1. RW-1 deposed that the original petitioner had filed a petition for probate for the same Will and that exhibit PW-4/R-1 is the certified copy of the said probate petition. The said petition was dismissed as withdrawn by the petitioner. According to RW-1, the relations between Jugal Kishore and his son, Ajodhya Prakash were not cordial and that Jugal Kishore had given '*Parkhati*' to Ajodhya Prakash and that exhibit RW-1/2 public



notice was given to the said effect in the 'Statesman' newspaper dated 29.05.1987. Jugal Kishore had issued exhibit RW-1/3 notice dated 12.10.1987 to Ajodhya Prakash calling upon him to vacate the portion of the building in his occupation. RW-1 further deposed that Roop Rani, wife of Jugal Kishore and mother of Ajodhya Prakash, who was the owner of building no. 2051-56, Kinari Bazar, Delhi had initially executed a will dated 23.09.1973, the copy of which is exhibit PW-1/4. However, this Will was cancelled by her by way of exhibit RW-1/5 Will dated 13.11.1986 due to the quarrelsome behaviour of her son, Ajodhya Prakash. Both the Wills were registered in the office of Sub-Registrar, Kashmiri Gate, Delhi. The original petitioner as well as respondents 4 and 5 filed probate petitions in respect of the aforesaid Wills. Probate case no. 122/08/91 in respect of Will dated 23.09.1973 was dismissed and Probate case no. 121/08/02 in respect of Will dated 18.11.1986 was allowed by exhibit RW1/6, judgment dated 17.11.2008. Jugal Kishore filed his no objection,



that is, exhibit RW-1/7, regarding Will dated 18.11.1986. Exhibit RW-1/8 is the objection of Jugal Kishore relating to Will dated 23.09.1973.

12.1. RW-1 further deposed that Jugal Kishore had filed a suit for permanent prohibitory injunction against the petitioner and his son on 30.08.1991 before this Court in respect of the property in question. Exhibit RW-1/9 is the written statement of Ajodhya Prakash and his son Madan Mohan and Exhibit PW-1/R-5 is the replication of Jugal Kishore. According to RW-1, Ajodhya Prakash had contended in his written statement that 50 % of the sale consideration for the property had been contributed by him, which contention was denied by Jugal Kishore in the replication filed by him in the aforesaid suit. The replication was filed on 03.05.1996, much after the execution of the alleged Will on 18.09.1995, which fact itself would show that the Will dated 18.09.1995 is forged and fabricated. RW-1 further deposed that Jugal Kishore had moved exhibit PW-1/R-6 and PW-1/R-7 applications dated 29.09.1995



and 07.08.1996 respectively alleging violations of the injunction order by Ajodhya Prakash and Madan Mohan. Jugal Kishore had also given exhibit RW-1/10 complaint dated 16.07.1996 to SHO, Karol Bagh Police Station, New Delhi against Madan Mohan. In the aforesaid suit, after the death of Jugal Kishore, exhibit RW-1/11 application for substitution based on the Will dated 22.04.1994 was moved by the beneficiaries. The said application was allowed by exhibit RW-1/12 order dated 14.07.1998. Neither the application nor the substitution was objected by Ajodhya Prakash nor was the existence of the Will in question dated 18.09.1995 ever set up in the said proceedings.

12.2. RW-1 further deposed that Jugal Kishore had executed a Will dated 22.04.1994 duly registered with the Sub-Registrar office, Kashmiri Gate, Delhi bequeathing the property in question to Prem Lata, the wife of the fourth respondent as well as to their sons, that is, himself and respondent no. 11. The copy of the Will was marked as exhibit RW-1/13. Thereafter, the property was



mutated in their names by DDA on 18.06.1988 and by the MCD on 25.08.1988 as per exhibits RW-1/14 and RW-1/15 respectively. No objection was filed by Ajodhya Prakash when mutation was effected. Further, Jugal Kishore had served exhibit RW-1/16 notice on Ajodhya Prakash calling upon him to vacate the premises and RW-1/17 is the acknowledgment card. But Ajodhya Prakash did not vacate. Hence, on 02.12.1996, Jugal Kishore filed suit no. 315/2/97 for recovery of possession and damages against Ajodhya Prakash and his son, which was decreed on 21.01.2003. An application dated 08.10.2003 for setting aside the said *ex-parte* decree filed by Madan Mohan was dismissed by order dated 29.10.2004, against which an appeal was filed. PW-1/R-8 is the appeal memorandum in the said case. The said appeal was dismissed on 18.09.2007. Civil Misc. (Main) no. 1329/2007 filed before this Court against the said order was never admitted.

12.3. The Will dated 18.09.1995 relied on by the petitioner according to RW-1, is forged and fabricated by Madan Mohan in



collusion with Advocate Sunil Kumar Mittal (PW-4), Advocate Manoj Kumar, their Munshi, Tara Dutt and Dr. S.C. Parikh. Advocate P.C. Mittal was conducting the cases on behalf of Jugal Kishore. Thereafter, Jugal Kishore engaged the services of Advocate B.K. Choudhary in his various pending cases. Advocate S.K. Mittal (PW-4), son of P.C. Mittal then started appearing for Ajodhya Prakash and Madan Mohan on the demise of his father. Advocate Manoj Kumar, who is seen to have prepared the Will, had appeared on behalf of Advocate S.K. Mittal in the cases pending between the parties herein. Exhibit RW-1/18 is the copy of the order sheets showing the appearance of Advocate Manoj Kumar on behalf of Advocate S.K. Mittal (PW-4). The Will in question is purported to have been drafted by Advocate Manoj Kumar, witnessed by Advocate S.K. Mittal, the counsel who was appearing against Jugal Kishore. In such circumstances, Jugal Kishore would not have got the Will drafted by Advocates appearing for his adversaries. RW-1 further deposed that Advocate



Sunil Mittal had also issued exhibit RW-1/19 notice dated 24.12.1990 to Jugal Kishore on behalf of Madan Mohan.

12.4. RW-1 further deposed that the inordinate delay in filing the original Will despite the repeated directions and orders of the court, would also show that the Will in question is forged and the petitioner was avoiding placing on record a forged and fabricated document fearing prosecution. Though the petition for probate was filed on 02.06.1998 with a xerox copy of the Will, the original was produced before the court only on 08.08.2001, that too, after repeated directions by the court.

12.5. RW-1 also deposed that Jugal Kishore was about 90 years old at the time of the execution of the disputed will, at which time he was staying in Karol Bagh. However, the Will in question was registered at Seelampur situated more than 10 kms away from his residence. The person who is alleged to have drafted the Will and the attesting witness are from Mori Gate and Tis Hazari Court and so in the ordinary course, the Will would have been registered



at Kashmiri Gate or at Asaf Ali road, New Delhi. The fact that it was registered at Seelampur also raises suspicion

12.6. According to RW-1, Jugal Kishore was paralysed in the year 1994 and thereafter, he remained confined to bed. Jugal Kishore was seriously ill on 27.01.1996 and was being treated by Dr. R.K. Singhal, who used to visit the former's house. On the advise of the doctor, Jugal Kishore was admitted in R.S. Seth Jessa Ram and Brothers Charitable Hospital on 06.02.1996 in a serious condition, where he remained for about 4 to 5 days. Exhibit RW-1/20 (colly) are the medical records. In such circumstances, registration of exhibit PW-4/1 Will by Jugal Kishore was not possible. Dr. S.C. Parikh had not examined Jugal Kishore on 05.02.1996 or on any other date. RW-1 also deposed that after the will in question was forged and manipulated, Madan Mohan (the substituted petitioner) in collusion with Advocate Sunil Mittal (PW-4) and Manoj Kumar as well as their Munshi Tara Dutta removed and replaced the record from the office of the Sub-



Registrar, Seelampur.

12.7. RW-1 denied the signatures and thumb impression stated to be that of Jugal Kishore in PW-4/1 Will. According to him, the said signatures had been forged by Madan Mohan. It was further deposed that Madan Mohan had filed civil suit no. 461/1996 on 08.07.1996 seeking injunction against Jugal Kishore and others and exhibit RW-1/21 is the certified copy of the plaint in the said case. Jugal Kishore contested the suit and filed an application for rejection of the plaint. This would show that at least till July 1996, the relationship between Jugal Kishore and Ajodhya Prakash and his son Madan Mohan were quite strained. In such circumstances, execution of a Will in their favour would never arise. It was also deposed that Madan Mohan had sent exhibit PW-1/R-4, legal notice dated 01.08.1991 calling upon Jugal Kishore to remove a shed and scrap materials in the ground floor of the building, as the said part of the building had been given to him as per a family settlement dated 01.04.1991. According to RW-1,



there was no such family settlement.

12.8. In the cross-examination, RW-1 deposed that he being one of the members of the family of Jugal Kishore, was well aware of the strained relationship between Jugal Kishore and Ajodhya Prakash and his son Madan Mohan from 1984-85. According to him, the relationship was not cordial till the death of Jugal Kishore. He further deposed that at the time of the death of Jugal Kishore, the latter was living on the second floor of the house at Karol Bagh. He was also living on the second floor and Ajodhya Prakash was living in a portion of the ground floor of the house. RW-1 deposed that he cannot recollect whether Jugal Kishore was admitted in Jessa Ram Hospital on. 05.12.1996 and shifted to I.C.U on 27.12.1996.

13. RW-2, a hand writing and finger print expert deposed that he had examined the disputed thumb impressions as well as signatures of Jugal Kishore on exhibit PW-4/1 and compared them with the admitted signatures of Jugal Kishore in ext. RW-1/21,



rental agreement. According to RW-2, the disputed thumb impressions do not tally with the admitted thumb impressions of Jugal Kishore. His report has been marked as Ext. RW-2/1 and the photographs and negatives were marked as Ext. RW-2/2 to RW-2/27 and RW-2/28 respectively.

14. Respondent no. 3 examined as RW-3 deposed that he had been residing at Balbir Nagar for the past 10 to 12 years, while his father was residing at Naiwala, Karol Bagh, whom he used to meet frequently. He stated that in December 1996 his father fell seriously ill and, when he reached Naiwala, his father had already been shifted to the hospital by his brother Jawahar Lal. He thereafter visited his father in the hospital after about four days and found him in a critical condition, though conscious and admitted in a private room and not in the ICU. RW-3 further deposed that during this period he had spoken to his father, who informed him that he had given half share of property no. 2271/68-69, Naiwala, Karol Bagh, to his wife, a fact which was not known to him earlier.



He stated that his father did not mention anything about giving jewellery to him or his wife. He admitted that he did not lodge any police complaint regarding the Will dated 22.04.1994, which he claimed as stolen by the petitioner.

15. Going by the pleadings in the petition for probate, the relevant portion relating to the Will is contained in paragraph 3 which reads thus:-

“3. That the photostat copy of the Will dated 5.2.1996 annexed herewith is the last Will and testament made by deceased Shri Jugal Kishore.”

(Emphasis supplied)

16. Along with the petition for probate, only a copy of the Will, that is, Ext. PW-4/1 alleged to have been executed by Jugal Kishore, was produced. As per the copy produced, the Will is dated 18.09.1995. Nowhere in the petition there is any reference to the original Will. No reasons have also been given as to why only a xerox copy of the Will was produced along with the petition. No pleadings were also there explaining the difference in



the date referred to in the pleadings and in the copy of the Will produced. The respondents disputed the genuineness of the Will and contended in their objections that it is a forged and fabricated document. In the rejoinder filed by the petitioner, the allegation reads thus:-

“1.The probate being sought for is with regard to Will dated 18.9.1995 and registered on 5.2.1996 and the original of which has been filed before this Hon’ble Court and which is being propounded. In the probate petition, it has been inadvertently mentioned that the Will is dated 5.2.1996, however, nothing turns around the same as the original Will for which the probate is being sought is before this Hon’ble Court.....”

(Emphasis Supplied)

17. This rejoinder is seen filed before the trial court on 28.05.2005. As noticed earlier, along with the petition only a xerox copy of the Will was produced. It is not clear from the materials on record the date on which the original of the Will was produced before the trial court. However, going by the testimony of RW-1, it was produced on 08.08.2001, much after the petition



for probate was filed in the year 1998, for which delay no reasons have been furnished.

18. The materials on record show that Jugal Kishore and his son the original petitioner, were not on cordial terms. According to the respondents, Jugal Kishore had disowned the petitioner by publishing a notice in the newspaper “Statesman” on 29.05.1987, the copy of which is Ext. RW-1/2 which reads thus:-

“My client, Shri Jugal Kishore Malhotra, son of Late Shri Lajja Ram Malhotra, resident of 2271/69 Naiwala, Karol Bagh, New Delhi hereby informs all concerned that he has disowned dis-inherited his son, Shri Ajodhya Prakash Malhotra. Any person dealing with him shall do so at his own risk. My client and other members of his family shall not be liable or answerable for any activities of his said son. The said son of my client shall have no title, right of interest in any movable or immovable properties of my client for all times to come.”

(Emphasis supplied)

19. This notice dated 25.09.1987 is also much before the filing of the petition. The trial court was not inclined to rely on this document holding that it is only a copy of the notice and not the



original. On going through the materials on record, it is evident that neither the petitioner nor the substituted petitioner has a case that the respondents had manipulated the notice. On the other hand, their case appears to be a case of ignorance of the notice. Even assuming for argument sake that the said document cannot be relied on, there are yet other aspects which raise doubts regarding the case forward by the petitioner. The materials on record reveal that suits and counter-suits were filed between Jugal Kishore and the petitioner as well as between Jugal Kishore and his grandson, the substituted petitioner. The documents brought in evidence through the testimony of RW-1 to which I have referred to in detail, shows that disputes and cases were going on even during the period 1995-96 when Ext. PW-4/1 Will is alleged to have been executed and registered. I have already referred to the said documents when reference was made to the testimony of RW-1, whose testimony has not been discredited in any way. In the background of the cases filed by Jugal Kishore against the



petitioner as well as his grandson, it appears improbable for the former to have executed Ext. PW-4/1 Will as alleged by the petitioner.

20. Further, the testimony of PW-4, one of the alleged attesting witness also raises doubts in the mind of the Court. At the risk of repetition, I again refer to the testimony of PW-4 who deposed that he had received a phone call from Ajodhya Prakash (the petitioner) who told him that his father wanted to execute a Will. Hence, he proceeded to the office of the Sub-Registrar, Seelampur where he found the petitioner; Jugal Kishore and a person named Tara Dutt. His further testimony reads thus:-

“...Shri Ajodhya Prakash requested me to sign on the Will, which was already prepared. I signed on the Will. The Will is Ex. PW-4/1 and bears my signatures at point A. The Will was already signed by Shri Jugal Kishore and the other person Tara Dutt, who was present there. Jugal Kishore signed on the back side of Will at point A and B, in my presence. I filed the present petition and attested the verification of petition and my attestation is Ex. PW-4/2, which bears my signatures at point A.”



(Emphasis Supplied)

21. Going by the testimony of PW-4, he had not seen Jugal Kishore affixing his signatures on the Will. Here I refer to Section 63 of the ISA which reads –

*“63. **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 acknowledgment of his signature or mark, or of 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.”



(Emphasis Supplied)

22. It is true that it is not necessary that the testator must sign or affix his signatures in the Will in the presence of the attesting witnesses. But in such circumstances, it is necessary for the testator to acknowledge his signatures in the Will. PW-4 has no case that he received from Jugal Kishore a personal acknowledgement of the latter's signature(s) or mark in the Will. Therefore, there is non-compliance of Clause (c) of Section 63 of the ISA. Further, it was not Jugal Kishore who asked PW-4 to attest the Will. On the other hand, it was the original petitioner, Ajodhya Prakash, who asked him to attest the will.

23. It has further come out in the testimony of PW- 4 that he was the lawyer who appeared for the original petitioner as well as the substituted petitioner in the various litigations against Jugal Kishore. In such circumstances, it is highly improbable for Jugal Kishore to have requested the lawyer of his adversary to be an attesting witness.



24. Further, the respondents also contend that Ext. PW-4/1 Will was drafted by Advocate Manoj Kumar, the junior of PW-4. But according to PW-4, he had a junior by name Manoj Kumar, but the Manoj Kumar who had drafted the Will, was not his junior. He also denied the suggestion that Tara Dutt Sutholia, who had signed the Will as witness no. 1 was his clerk. However, PW-4 admitted that his office functions at 2855, Mori Gate, Delhi. The address of Tara Dutt Sutholia given in Ext. PW-4/1 Will is the same address given by PW-4 as his office address.

25. Another quite interesting aspect that needs to be noticed is the certification that is seen made by one Dr. S.J. Parikh, in Ext. PW-1/4 which reads thus:-

“I have examined today Sh. Jugal Kishore and found in perfect disposing mind and good health.”

What was the necessity for making such an endorsement in the Will is not clear. So, was Jugal Kishore that sick or laid up which required a certification of his health by a doctor? The



respondents have also contended that Jugal Kishore was not in a sound disposing state of mind. This certification does raise doubts regarding the state of mind and health of Jugal Kishore. Moreover, the said doctor was also not examined for which no reason(s) have been furnished.

26. It is no doubt true that the burden to prove the execution of the Will is on the propounder and only when the initial burden is discharged, the onus would shift to the respondents. The aforesaid grounds raise suspicions regarding the execution of the Will, which have not been dispelled by the petitioner.

27. It was submitted by the learned counsel for the petitioner that there is no reason to disbelieve the Will as an equitable distribution of the assets of Jugal Kishore has been made in the Will. Equitable distribution of the estate of the deceased can be taken as one of the grounds in support of a Will when no suspicious circumstances are brought out. In the case on hand, when the execution of the Will is riddled with suspicious



circumstances, merely because the Will refers to an equitable distribution of the assets is no ground to hold the Will to be genuine or the last wish of the testator.

28. The trial court has rejected all the aforesaid suspicious circumstances and concluded that despite the hostility between the father and the son revealed by the materials on record, it was possible/probable that the relationship between the father and the son had improved/ repaired and that the father had bequeathed the property in question to his son. On going through the pleadings and evidence, I find that none of the parties have such a case. Therefore, the trial court obviously went wrong in rejecting the suspicious circumstances pointed out by the respondents and concluding that the petitioner had succeeded in establishing the genuineness of the Will. In these circumstances, I find that the trial court went wrong in appreciating the evidence on record and arriving at its conclusions. So, an interference by this Court is called for and hence, I do so.



29. In the result, the appeal is allowed and the impugned order is set aside.

30. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

DECEMBER 20, 2025
RS/ABP