



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

% **Judgment reserved on : 19 March 2025**
Judgment pronounced on : 21 March 2025

+ **FAO 190/2019 & CM APPL. 20723/2019, CM APPL. 10058/2020,
CM APPL. 9635/2022**

NARINDER KUMARAppellant
Through: Mr. Dharendra Singh and Mr. M.
Minhal Mehdi and Ms. Bhawna,
Adv. alongwith appellant in person.
versus

USHA RANI TUTEJA & ORSRespondents
Through: Mr. Keshav Tiwari, Adv. for R-2.
Ms. Prerna Chaturvedi, Adv. for R-3
and R-5.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. The appellant has preferred this appeal under Section 299 of the Indian Succession Act, 1925 [**“Act”**] assailing impugned judgment dated 22.03.2019 passed by the learned Additional District Judge-07, South-East, Saket Courts, New Delhi [**“trial Court”**], whereby the petition filed by the appellant i.e. the petitioner before the learned trial Court, seeking probate of the Will dated 26.11.2003 executed by her mother late Smt. Ram Pyari wife of late Shri Om Prakash [**“hereinafter referred as ‘testatrix’**], who passed away on 05.05.2004, was dismissed.



FACTUAL MATRIX:

2. Briefly stated, the testatrix on her death was survived by one son i.e. the appellant before this Court and her five daughters/respondents and by virtue of the Will dated 26.11.2003, the appellant was sought to be claimed as sole beneficiary in respect of right, title and interest in the property bearing No. 2/16 (Right Side), Kalkaji Extension, New Delhi-110019 [**“subject property”**] admeasuring 205 square yards.

3. It was claimed that the said Will had been attested by his sister respondent No.4/ Smt. Sushma Arora, examined as PW-1 and Mr. Jagdish Tuteja, husband of another sister viz., respondent No.1/Smt. Usha Rani Tuteja, examined as PW-2. It is pertinent to mention here that the subject property was originally allotted to two brothers, namely, Mr. Ramji Dass and Mr. Om Prakash in the year 1963, the latter being the father of the present set of parties, and Mr. Ramji Dass died on 19.10.1993 and after his death, the legal heirs of Mr. Ramji Dass relinquished their share in favour of Mr. Surinder Kumar on 17.05.2000 and the other brother Mr. Om Prakash died on 20.11.1999 leaving behind his wife Smt. Ram Pyari , the appellant and the respondents No. 2 to 6 as his legal heirs, who relinquished their right, title and interest in the subject property in favour of the testatrix; and accordingly the subject property stood mutated in favour of the testatrix and Mr. Surinder Kumar in the L&DO¹ records on 09.12.2002. It is also admitted that the subject property was later on converted into freehold

¹ Land and Development Office



vide Conveyance Deed dated 03.11.2003 and mutated in the record of the MCD² as such on 13.10.2004.

4. Shorn of unnecessary details, it is pertinent to mention that evidently a partition deed was executed as amongst the appellant-brother and his five sisters dated 22.09.2008 Ex.PW-1/D-1 whereby *inter alia* it was acknowledged that the testatrix had died intestate and eventually the said partition deed acknowledged the interest of the appellant and his sisters to the extent of 1/6th each in the subject property. Infact, it is also on the record that thereafter, except for respondent No.2/Smt. Laxmi Tiwari, the remaining sisters also executed relinquishment deeds on different dates in favour of their brother i.e. the appellant, thereby making the appellant the owner of the subject property to the extent of 5/6th share.

5. In the said backdrop, the instant petition seeking probate of Will dated 26.11.2003 was filed on 19.08.2013. Interestingly, in the entire narrative of the petition, there is no mention of execution of the partition deed as amongst the siblings of the testatrix as well as relinquishment deeds executed by other sisters barring respondent No.2 in his favour. It is stated that the appellant acquired the knowledge of the execution of the Will when the same was shared and handed over to him by Mr. Jagdish Tuteja on the occasion of *sagan* ceremony of son of respondent No.4/Smt. Sushma Arora. Though, no date is mentioned in the pleadings, during the course of hearing it was stated that the execution

² Municipal Corporation of Delhi



of the Will was disclosed to him on 16.11.2012. It is pertinent to mention that only respondent No.2 Smt. Laxmi Tiwari raised objections to the genuineness and validity of the impugned Will dated 26.11.2003.

6. During the course of legal proceedings before the trial Court, the following issues were framed on 12.09.2014:

- “(1) Whether the petitioner is entitled for probate of will dated 26.11.2003 of late Smt. Ram Pyari ? OPP.
- (2) Whether the suit of the probate petition filed by the petitioner is time barred ? OPR.
- (3) Relief.”

7. It is also pertinent to mention here that during the course of leading of evidence, the appellant apart from examining PW-1/Smt. Sushma Arora and PW-2 Mr. Jagdish Tuteja, also examined himself as PW-3 while on the other hand were examined Mr. Gaurav Tiwari as RW-1, Mr. Sanjay Goswami the office assistant from Sub-Registrar-V, Mehrauli, New Delhi as RW-2, Mr. Bijumon P, Accounts Clerk St Stephen Hospital as RW-4 (*sick*) and Mr. Inder Arora as RW-5.

8. Suffice to state that the learned Trial Court decided issue No.2 in favour of the appellant and against the respondents. Insofar as issue No.1 is concerned, the same came to be decided against the appellant. Hence, this appeal.

LEGAL SUBMISSIONS:

9. The main plank of the submissions by the learned counsel for the appellant was that the execution of the Will had been proven by him in accordance with Section 63 of the Act as well as Section 68 of the



Indian Evidence Act, 1872 and therefore, the decision rendered by the learned trial Court cannot be sustained in law. It was urged that the partition deed dated 22.09.2008 Ex.PW-1/D-1 came to be executed in ignorance of the factum of will dated 26.11.2003 by his mother, and thus, there could be no estoppel and the solemn wishes of his mother shall precede over any thing done due to ignorance, and the same must be given legal recognition.

ANALYSIS & DECISION:

10. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties at the Bar. I have also perused the relevant record of the case.

11. It would be expedient to reproduce the reasons which have been accorded by the learned trial Court while passing the impugned judgment dated 22.03.2019, which go as under:

“35. Will Ex PW1/1 is provided herein as under:-

WILL

This Will is made here at New Delhi on this 26th Day of November, 2203. By Smt. Ram Pyari w/o Late Shri Om Prakash R/o 2/16, Kalkaji Extn. New Delhi-110019, hereinafter called the Testator.

IN FAVOUR OF

Shri Narender Kumar s/o Late Shri Om Prakash R/o 2/16, Kalkaji Extn, New Delhi-110019, hereinafter called the Executor

WHEREAS the Testator is the owner and in physical possession of half undivided share of Property No. 2/16, Kalkaji Extn., New Delhi-110019, total measuring 411 Sq. Yds. (half undivided share 205.50 sq. yds.).

AND WHEREAS I have one son namely Shri Narender Kumar and five daughters namely Smt. Usha Rani Tuteja, Smt. Neelam Tiwari and Smt. Manju Gambhir. That my four daughters are married and one daughter Miss Sushma Arora is unmarried. That I have already given sufficient fund to my all daughters and for the



same they interest, liens and titles in respect of the above said property and as my wish I am bequeathing the above said property in favour of my only son namely Shri Narender Kumar.

The Testator willingly makes this will that after her demise, all her rights, interests, liens and titles in the said property be acquired, possessed and inherited by the Executor, who may get the same mutated/substitted/transferred etc. in her own name, as owner in the RECORDS OF THE L&DO/MCD and all other concerned authorities on the basis of this Will or its certified true copy, without any objection by the Testator's legal heirs, their successors, et, or any body else.

The Testator further declares that this is her FIRST and last will in respect of the said property, and has been executed by her own consent, without any force, fraud, coercion or allurement, from any corner whatsoever, while in possession of sound health and disposing mind.

That in case if said Shri Narender Kumar, dies/die earlier than me, then the said property shall become the property of his legal heirs and successors.

That the contents of this WILL have been explained to me which I have understood and is correct. That this is my last and final WILL in respect of the said property only.

IN WITNESS WHEREOF, I, the Testator have put my hands on this Will in the presence of the following witnesses on the date, month and year herein mentioned below.

WITNESSES:-

TESTATOR

- 1.
- 2.

36. The will had been allegedly executed on 26.11.2003 and bears the thumb impression of Smt Ram Pyari and signatures of two attesting witnesses i.e. PW-1 Sushma Arora and Jagdish Chander. Ms.Sushma Arora is sister of petitioner and Jagdish Tuteja is brother-in-law (husband of another sister) of petitioner. It is also attested by Notary Public on the same day in Delhi and bears the photograph of Smt Ram Pyari. As far as the mental state of testatrix is concerned, though respondent has stated that she was not in a good state of mind at the time of execution of alleged will, however, petitioner's witnesses have categorically stated that apart from suffering from old age ailments, she was in good state of mind and she having a sound mind to execute a will. Therefore, her state of mind at the time of execution of alleged will is found to be sound.



37. Though, it is not necessary to go into the background with respect to the ownership of the property, however, in order to clarify, certain facts which are relevant are necessary to be pinned down in order to understand the case properly. The property in question was allotted to two brothers Sh. Ramji Das and Sh Om Prakash and parties to the suit are the children of Sh. Om Prakash and Smt Ram Pyari was their mother. The property was equally divided between LR of Smt Ram Pyari and Sh Om Prakash vide partition deed dated 02.09.2008, Ex PW/D-1. This partition deed clearly shows that attesting witness PW-1 namely Smt Sushma Arora is shown to be a co-sharer and their mother Smt. Ram Pyari died intestate. The last para of internal page no. 6 of said partition deed is produced as under:-

"AND WHEREAS the said Smt. Ram Pyari died intestate and consequent upon her death, her one half (1/2) undivided share in the aforesaid property devolved upon the Second Party, as her only heirs"

38. It is very clear in the said partition deed that Smt. Ram Pyari died intestate. Secondly on internal page no.8 of the said portion deed which is Ex.PW-1/D-1, para 4 is produced herein as under:

"That both the parties have assured each other that the property, hereby partitioned or portions occupied by them respectively, are free from all sorts of encumbrances such as prior sale, mortgage, liens, court injunctions, attachments, disputes, gifts, wills, exchanges etc and both the parties are having marketable title of their own respective share/portions in the above said property. Moreover, in future, if any defect shall be found in the title of any party, then the other party shall be liable to indemnify the losses/damages sustained and suffered by the party concerned."

39. Both these paragraphs in the said partition deed shows that Smt Ram Pyari had died intestate. This document attains relevance in view of the fact that one of the attesting witness to the Will i.e. PW-1 Ms. Sushma Arora was signatory to this document despite knowing fully well since 2003 itself that her mother Smt. Ram Pyari had executed a Will in favour of her brother Narender Kumar (petitioner). She signed the said partition deed which raises suspicion upon the execution of the said will. Similarly in the year 2013, Relinquishment deed relinquishing her share apart from other sisters was executed by Ms Sushma Arora in favour of petitioner. In the said relinquishment deed also, Ms Sushma Arora stated that she



was having 1/6" share in the property and had relinquished her share in favour of her brother. This relinquishment deed was signed by all the sisters except respondent no. 3 who is the contesting respondent in this case. Other respondents no. 2, 4 & 5 have given their no objection to the probate petition and respondent no. 6 is exparte. Apart from these two suspicious circumstances, there are other relevant facts which raises suspicion on the execution of the will and they are as under:-

(i) The petitioner had claimed in the probate petition that said will was handed over to him personally by Jagdish Tuteja in the presence of all respondents at the petitioner's house on the occasion of Sagan Ceremony of Inder Arora whereas **PW-2 stated that petitioner was aware of his coming to Smt. Ram Pyari for preparation of a will and also stated that petitioner was present when the preparation of will was discussed. It is difficult to understand as to when the petitioner was aware about the preparation of the will by Smt Ram Pyari then why the attesting witness PW-2 handed over the will to the petitioner after seven years from the death of Smt Ram Pyari and why the petitioner Narender Kumar did not ask for the same from Jagdish Tuteja after death of his mother.** Interestingly the other attesting witness to the will namely Ms Sushma Arora who has been examined as PW-1 has given a different version and stated that her brother Narender Kumar i.e. petitioner herein was not aware about the execution of the will executed by their mother in his favour. Both the statements are contradictory and are very relevant in order to see that contradictory version with respect to preparation of will, execution of the same and coming in the hands of the petitioner have come on record.

(ii) PW-1 Ms Sushma Arora during her cross examination stated that she, her Jija Ji i.e. PW-2 and their mother, all three went to Tis Hazari for attestation from Notary on the same date whereas PW-2 during his cross examination stated that he, Gulshan Kumar, who prepared the will of Smt Ram Pyari were only three persons who went to the court for preparation of will. He also stated that he did not appear before any attesting authority for the attestation of the will and it was- got attested by Smt Ram Pyari of her own, thus belying the version of PW-1 with respect to attestation.

(iii) PW-2 also stated that petitioner and Ms. Sushma Arora were having complete knowledge about the will of Smt Ram Pyari whereas PW-1 stated that petitioner was not aware about the execution of the will. Both the statements of attesting witnesses are



contradictory. Moreover, petitioner has stated that he came to know about the will in the year 2012, thus making statement of PW-2 false.

(iv) Legal notice dated 08.01.2013 was sent by Advocate of respondent no. 3, which is admitted to have been received by PW-3 i.e. petitioner. Though, in the replication, it was denied by petitioner that petitioner alongwith), his wife have visited the office of the Advocate of the respondent no. 3 and has sought time for settling the matter, however, in the cross examination, he (PW-3) admitted having received the notice and visiting the chamber of the advocate and further seeking time for discussing about the settlement. This shows a clear false statement in the replication filed by plaintiff.

(v) The factum of signature of Ms. Sushma Arora on the partition deed wherein it is mentioned that Smt Ram Pyari had died intestate has already been discussed. This shows that till the execution of partition deed, there was no dispute between the parties and nobody, raised the question of execution of any will.

40. The aforesaid discussion clearly shows that will has been manufactured after receiving notice of the suit for partition by petitioner and the same is not a genuine document. Therefore, strong suspicion has been raised against the execution of the will by Late Smt Ram Pyari during her lifetime in view of the deviant testimonies of PW-1 and PW-2. In "*Raja Ram Singh Vs. Arjun Singh & Anr 2002IVAD (Delhi) 55*", it was held that:-

13. "In order to appreciate the credibility of the witnesses, the court can look into the surrounding circumstances"

41. The surrounding circumstances have already been discussed. The partition deed and the relinquishment deed are surrounding circumstances and execution of these deeds show that no will was ever executed by testatrix in favour of petitioner. Hence, this issue is decided against the petitioner.

Relief

42. Hence, in view of the findings given above, probate petition stands dismissed."

12. On a careful perusal of the aforesaid reasoning given by the learned trial Court, this Court has no hesitation in holding that the execution of the Will dated 26.11.2003 has not been satisfactorily proven by the appellant during the course of trial. Apart from the



apparent contradiction in the testimony of PW-1 Smt. Sushma Arora and PW-2 Mr. Jagdish Tuteja, observed by the learned Trial Court as to whether or not the appellant was aware of the execution of the Will by his mother, there is a saying in the evidence law that ‘a man can lie but not the circumstances’. There are overwhelming circumstances that clearly demonstrate that there are several unexplained if not suspicious grounds to doubt the genuineness of the will being propounded by the appellant in his favour.

13. First things first, although it is sought to be claimed that the impugned Will was executed by the testatrix on 26.11.2003, which was only claimed to be propounded, if the case of the appellant is believed, on coming to know about the same at the time of *sagan* ceremony of his nephew on 16.11.2012 and then petition seeking probate of the Will was filed on 19.08.2013, learned trial Court has rightly observed that if PW-1 Smt. Sushma Arora was an attesting witness to the Will dated 26.11.2003 Ex.PW-1/1, it is very unlikely that she would have executed the partition deed dated 12.09.2008 Ex.PW-1/D-1.

14. Likewise, the same inference can also be applied with regard to PW-2 Mr. Jagdish Tuteja since his wife and the sister of the appellant, namely respondent No1./Smt. Usha Rani Tuteja was also a signatory and executed the aforesaid partition deed on 22.09.2008. In the contemporary Indian society, it is very unlikely that respondent No.1 did not tell her husband that she was going to execute a partition deed involving her siblings so as to seek 1/6 share in the subject property.



15. That is not the end of story since subsequently, relinquishment deeds were executed by the each of the sisters except for respondent No.2, and if that is the case, again it is very unlikely that the respondent No.1 might have executed the relinquishment deed thereby surrendering her right, title and interest in the subject property in favour of her brother without having knowledge or consent of her husband viz, PW-2 Mr. Jagdish Tuteja, who as claimed to be, was aware of the execution of the impugned will by her mother in law.

16. Learned trial Court rightly relied upon the decision in the case of **H. Venkatachalah Iyengar v. Chimmajamma**³ wherein the Supreme Court held as under:

“(20). There may however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; **the dispositions made in the will may appear" to be unnatural, improbable or unfair in the light of relevant circumstances;** or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. **In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator.** It is true that, if a caveat is filed alleging the exercise of undue

³ AIR 1959 SC 443



influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; **but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter."**

{Bold portions emphasized}

17. Further, it would be relevant to refer to the observations of the Supreme Court in the case of **Surendra Pal v. Saraswati Arora (Dr.)**⁴, wherein it was held as under:

"7. The propounder has to show that the Will was signed by the testator; that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But there may be cases in which the execution of the Will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of the relevant circumstances the dispositions appear to be unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the Will are not the result of the testator's free will and mind. In all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the Will is accepted. Again in cases where the propounder has himself taken a prominent part in the execution of the Will which confers on him substantial benefit that is itself one of the suspicious circumstances which he must remove by clear and satisfactory evidence. After all, ultimately it is the conscience of the court that has to be satisfied, as such the nature and quality of proof must be commensurate with the need to satisfy that conscience and remove any suspicion which a reasonable man may, in the relevant circumstances of the case, entertain. (See *H. Venkatachala lyengar v. B.N. Thimmajamma* [AIR 1959 SC 443 : 1959 Supp (1) SCR 426 : 1959 SCJ 507] and *Rani Purnima Devi v. Kumar Khagendra Narayan Dev* [AIR 1962 SC 567 : (1962) 3 SCR 195 :

⁴ (1974) 2 SCC 600



(1962) 1 SCJ 725]) In the latter case this Court, after referring to the principles stated in the former case emphasised that where there are suspicious circumstances the onus will be on the propounder to explain them to the satisfaction of the court before the Will could be accepted as genuine; and where the caveator alleges undue influence, fraud and coercion the onus is on him to prove the same. It has been further pointed out that the suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will which may be unnatural or unfair or improbable when considered in the light of the relevant circumstances. If the caveator does not discharge the burden which rests upon him in establishing the circumstances which show that the Will had been obtained by fraud or undue influence, a probate of the Will must necessarily be granted if it is established that the testator had full testamentary capacity and had in fact executed it validly with a free will and mind. The observations of the Privy Council in *Motibai Hormusjee Kanga v. Jamsetjee Hormusjee Kanga* [AIR 1924 PC 28 : 80 IC 777 : 26 BLR 579] support the above proposition. Mr Ammer Ali observed at p. 33:

“It is quite clear that the onus of establishing capacity lay on the petitioner. It is also clear that if the caveator impugned the Will on the ground that it was obtained by the exercise of undue influence, excessive persuasion or moral coercion, it lay upon him to establish that case.”

In the light of what has been stated if the various requirements of a valid Will are established, then as observed by the Privy Council in *Motibai Hormusjee Kanga's case* at p. 33:

“A man may act foolishly and even heartlessly; if he acts with full comprehension of what he is doing the Court will not interfere with the exercise of his volition.”

{Bold portions emphasized}

18. In summary, the appellant is failing to satisfy the conscience of this Court in appeal that the impugned will was at all executed on the alleged date 26.11.2003 as per the depositions of the witnesses . It belies common sense and logic that PW-1 Sushma Arora would execute a partition deed on a subsequent date despite knowing that her mother



had executed a will in favour of her brother so much so that later she would execute a relinquishment deed in favour of her brother/appellant. Likewise, at the cost of repetition, the same inference could be raised against respondent no. 1 who too executed the above-referred partition deed and relinquishment deed while all the time her husband PW-2 was claimed to be the attesting witness to the impugned will. It is but manifest that in all probabilities, on the non-execution of the relinquishment deed by respondent no. 2 Smt. Laxmi Tiwari, the concerned parties including the appellant fabricated the impugned will to claim exclusive right, title and interest in the subject property.

19. In view of the foregoing discussion, this Court finds that the impugned judgment dated 22.03.2019 passed by the learned trial Court does not suffer from any patent illegality, perversity or incorrect approach in law. The present appeal is bereft of any merits and the same is accordingly dismissed.

20. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

MARCH 21, 2025

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