



2025:DHC:1096



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

% **Judgment reserved on: 19th November 2024**
Judgment pronounced on: 21 February, 2025

+ CM(M) 1471/2023 & CM APPL. 49059/2023
CHANDER MOHAN MEHTAPetitioner
Through: Mr. Rajmangal Kumar
with Ms Sangeeta
Kumar, Advs.
versus
THE STATE THROUGH SECRETARY NCT OF DELHI
AND ORS.Respondents
Through: Mr. Sunder with Mr.
Praveen Kumar & Mr. Ravi Prakash,
Advs.

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. This petition has been filed under Article 227 of the Constitution of India, impugning the order dated 27.07.2023, passed by the learned District Judge in PC No. 81/2022, titled "*Satish Kumar Mehta Vs. The State & Ors.*", whereby, the application seeking permission to place on record a copy of the registered Will dated 25.05.1983 was dismissed.
2. The petitioner assailed the impugned order on multiple grounds, primarily arguing that the learned Trial Court erred in dismissing the application without considering the material significance of the registered Will. Petitioner submits that the registered Will forms a



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crucial part of record of the probate proceedings and its exclusion would not only be unjust but also hinder the fair adjudication of the matter.

FACTUAL BACKGROUND:

3. Briefly stated the facts leading to the filing of the present petition are that the testator, Sh. Balwant Singh Mehta, a resident of Delhi, died on 24.05.1988, leaving behind his wife, three daughters and four sons.

4. The deceased executed a Will dated 25.05.1983, bequeathing the immovable property at H-105, Shivaji Park, Punjabi Bagh (West), New Delhi to the petitioner and respondent No. 2 in equal shares. The Will further stipulated that the property could not be sold during the lifetime of his wife, Smt. Pushpa Wanti.

5. The Will was duly registered with the Sub Registrar's Office on 04.06.1987 vide Registration No. 6179 in Additional Book No. III, Volume No. 504 on Pages 55 to 56.

6. Smt. Pushpa Wanti, wife of the deceased, expired on 15.08.2008.

7. In 2009, respondent No. 2 filed a Probate Petition (Test Case No. 21/2009) for the grant of Probate/Letter of Administration, wherein, petitioner was arrayed as Respondent No. 4.

8. Petitioner was later transposed as Petitioner No. 2 vide order dated 21.07.2011.

9. The unregistered copy of the Will dated 25.05.1983 was already placed on record and one of the attesting witnesses deposed regarding its validity on 06.01.2011.



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10. Petitioner obtained certified copy of the registered Will dated 28.05.2012, however, the same was not placed on record.

11. Petitioner filed an application bearing IA No. 13827/2019, seeking permission for placing on record the registered Will dated 25.05.1983.

12. During the pendency of the application, the case was transferred to the District Court due to enhancement of pecuniary jurisdiction.

13. The learned Trial Court vide order dated 27.07.2023, dismissed the application on the ground that petitioner had the knowledge of the registered Will since 2012 but did not place it on record at appropriate stage of the proceedings.

SUBMISSIONS:

14. Learned counsel for the petitioner has argued that the learned Trial Court's order is erroneous for the following reasons:

- a) It failed to consider that the registered Will is an authenticated document with higher evidentiary value than the unregistered Will already on record.
- b) The exclusion of registered Will shall severely prejudice the petitioner's case and create an unjustified legal disadvantage.
- b) The unregistered and registered Wills are identical in contents, thus, no harm or prejudice would be caused to the respondents if the registered Will is allowed to be placed on record.
- d) The delay in placing the registered Will on record was unintentional and was due to inadvertence and there was no mala fide intent.
- e) Since all the witnesses have passed away, the best available



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documentary evidence must be considered for fair adjudication.

f) The dismissal of the application precludes the petitioner from substantiating its case based on the strongest available evidence.

15. The learned counsel for the respondents has submitted that petitioner has not ascribed any reason whatsoever for seeking to place on record the copy of registered Will at such a late stage when the entire evidence has been led on behalf of the petitioners as also the contesting respondents. It is further submitted that even though, petitioner had the copy of the registered Will in the year 2014, when his evidence was recorded as PW-3, no effort was made to produce and prove the registered Will. Thus, there is no justification for granting permission to place on record the certified copy of the Will.

16. Undisputedly, the Probate Petition was filed in the year 2009. Ideally speaking, the certified copy of the Will should have been made part of the petition. Petitioner collected the certified copy of the Will in the year 2012 from the Sub Registrar's Office. Thus, admittedly, petitioner was in possession of the certified copy in the year 2014, i.e., before his examination in court as PW-3.

17. The learned Trial Court itself has noted in its order that an assertion that the Will in question was a registered Will, finds mention not only in the amended petition dated 10.04.2018 but also in the original petition filed in the year 2009. Thus, the case of the petitioner throughout has been that testator executed a Will which was duly registered with the Sub Registrar's Office. Thus, by seeking permission to place on record the certified copy of the Will, petitioner is not trying to set up a new case.



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18. The comparison of the unregistered and registered Will, prima facie, reveals that they are replica of each other, except that the document sought to be filed is a registered instrument. Since the case of the petitioner throughout has been that the Will executed by the testator was registered, the lapse in placing the said document on record appears mere because of inadvertence rather than any mala fide intent. The unregistered Will is already part of the record and therefore permitting the registered Will would not introduce any new or conflicting evidence. No prejudice would be caused to the petitioner, inasmuch as, the evidence to prove the unregistered Will has already been led, and therefore, he is not being taken by surprise. In the opinion of this Court, the interest of justice would be better served if all the relevant and legally valid evidence be considered for determining the petition on its merits.

19. For the delay in filing the certified copy on record, the contesting respondents can be compensated with cost.

20. Accordingly, the impugned order dated 27.07.2023 is set aside and the application seeking permission to place the registered Will dated 25.05.1983 on record is allowed, subject to cost of Rs. 25,000/-.

21. Before parting, it may be made clear that the Court has not expressed any opinion regarding the genuineness and due execution of the Will, which is left to be decided by the learned Trial Court on the basis of the evidence led before it. Once the copy of the registered Will is taken on record, if any request is made by the petitioner for summoning the record from the Sub Registrar's Office, the learned Trial Court may consider the same for the limited purpose of proving



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the registration of the Will.

22. The petition stands allowed accordingly.

RAVINDER DUDEJA, J.

February 21, 2025

RM/r

Signature Not Verified

Digitally Signed

By: SUNITA KUMARI

Signing Date: 21.02.2025

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