



2025:DHC:10500-DB



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

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*Judgment reserved on: 20.11.2025**Judgment pronounced on: 27.11.2025*+ **FAO(OS) 113/2023 and CM APPL. 55662/2023****SUNIL MADAN MANDHAN**

.....Appellant

Through: Mr. S.N. Choudhri, Mr. K.N. Singh, Ms. Shruti Choudhary and Mr. Prabnoor, Advs.

versus

THE STATE GNCT OF DELHI & ANR.Respondents

Through: Mr. A.K. Singla, Sr. Adv. with Mr. Rahul Shukla, Ms. Bachita Karuah Shukla, Ms. Sayantani Baskar and Mr. Sahil Kumar, Advs.

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. The Appellant [Respondent No.2 before the learned Single Judge] assails the correctness of the Judgment dated 23.08.2023 [hereinafter referred to as 'Impugned Judgment'] passed by the learned Single Judge in TEST.CAS. 83/2015, whereby probate of the Will dated 22.10.2013, executed by late Shri Manohar Lal [hereinafter referred to as 'the Testator'], was granted in favour of, Ms. Sunita Kakkar @ Baby, the daughter of the Testator and the named Executrix, the Respondent No.2 herein [Petitioner before the learned Single Judge].

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FACTUAL MATRIX

2. In order to comprehend issues involved in the present case, the relevant facts in brief are required to be noticed.

3. The Testator, late Shri Manohar Lal, expired on 25.03.2015, leaving behind two children, the Appellant (son) and the Respondent No.2 (daughter). Under the Will dated 22.10.2013 [hereinafter referred to as 'the Will'], the Testator bequeathed his entire self-acquired property, namely Property No. C-35, East of Kailash, New Delhi, comprising the basement, ground floor, second floor and terrace rights [herein after referred to as 'the Suit Property'], exclusively to Respondent No.2. The Will records the Testator's estrangement from the Appellant since 1989, his consistent neglect by the Appellant, and the care and support received from Respondent No.2.

4. During the probate proceedings, Respondent No.2 examined herself as PW-1 and produced Lt. Col. (Retd.) Prem Nath, the attesting witness, as PW-2 who proved due execution of the Will in terms of Section 63 of the Indian Succession Act, 1925 [hereinafter referred to as 'ISA']. The Appellant/Objector entered appearance as DW-1 and disputed the genuineness of the Will, alleging (i) forgery of the testator's signature; (ii) improper attestation; and (iii) existence of suspicious circumstances. The Appellant/Objector relied upon a bank signature form of 1982 and further examined the Notary Public who notarised the Will as DW-2 and a bank official from Canara Bank as DW-3, to support his objection regarding alleged forgery and improper attestation.

5. The learned Single Judge, after a detailed appraisal of the oral and documentary evidence including the attesting witness's testimony,

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contemporaneous public notices dated 22.10.2013 published in the Indian Express (English) and Jan Satta (Hindi) by the Testator disowning the Appellant and a handwritten note dated 15.10.2012 reflecting the same intention, found the Will to be duly proved. The learned Single Judge rejected the objections regarding signature comparison, held that minor inconsistencies did not undermine the core attestation and concluded that the propounder had discharged the burden of dispelling all suspicious circumstances.

6. Aggrieved by the grant of probate, the Appellant has preferred the present Intra-Court Appeal.

CONTENTIONS ON BEHALF OF THE APPELLANT

7. Learned counsel for the Appellant contends that the learned Single Judge erred in holding the Will to be genuine. Learned counsel contends that the Will is surrounded by several suspicious circumstances and that Respondent No.2, on whom the initial burden lies, has not proved that the document was voluntarily executed or reflects the true last wishes of the testator.

8. Learned counsel further contends that the genuineness of the Testator's signature has not been established. Learned counsel alleges that the signature on the Will differs from the admitted signatures, and this specific objection was not adequately addressed in the Impugned Judgment. The Respondent No.2 did not produce any reliable specimen signatures nor seek expert opinion, leaving this essential issue unresolved.



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9. It is also submitted that the Testator, being nearly 89 years old and in weak physical and mental condition, could not have comprehended the contents of the Will or independently visited the advocate or the notary. Learned counsel contends that the evidence ought to have been scrutinised with greater care in light of the Testator's age and health.

10. Learned counsel submits that the Appellant had long-standing cordial relations with his parents, frequently visited them, supported them financially, and cared for them regularly. There was no dispute or complaint from either parent until the mother's death in August 2012. In these circumstances, there was no reason for the Testator to suddenly disinherit his only son and grandson.

11. The Appellant claims that the sudden change in the Testator's attitude after 2012 was due to the influence of Respondent No. 2, who allegedly bore resentment because the Appellant declined to adopt her daughter in 1994. Learned counsel submits that Respondent No. 2 took advantage of the Testator's age and vulnerability, first procuring the handwritten note dated 15.10.2012 and then the disputed Will of 22.10.2013. The language used in the handwritten note is stated to be unnatural for an elderly father, which raises further doubt.

12. The Appellant also claims that the existence of two separate documents, the handwritten note and the later Will, without any satisfactory explanation adds to the suspicion. The handwritten note is neither witnessed nor attested, and no reason has been offered as to why a formal Will had to be executed shortly thereafter.



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13. Learned counsel for the Appellant draws attention of the Court to inconsistencies in the evidence of the Attesting Witness (PW-2) and the Notary Public (DW-2). While the PW-2 says the Will was signed at the Testator's residence, on the other hand DW-2 states it was signed in her presence at Patiala House Courts. Learned counsel alleges that if both versions were correct, the Will should have reflected more than one set of signatures, which is not the case. Similar inconsistency is pointed out in the evidence regarding the circumstances of the Testator's death and cremation.

14. Learned counsel further submits that although the Testator usually consulted a close-relative advocate for his legal matters, both the disowning notice and Will were prepared by advocates unknown to family and located near the workplace of the husband of Respondent no. 2. According to the Appellant, this strongly suggests that the documents were prepared at the instance of the Respondent No.2 and not out of the free will of the Testator.

15. On these grounds, the learned counsel for the Appellant contends that the findings of the learned Single Judge are not sustainable and that the Impugned Judgment deserves to be set aside.

CONTENTIONS ON BEHALF OF THE RESPONDENTS

16. *Per contra*, learned counsel for the Respondents supports the Impugned Judgment and submits that the learned Single Judge has correctly appreciated the evidence on record. Learned counsel contends that there is no error which calls for interference in appeal.



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17. Learned counsel for the Respondents submits that the Will was duly executed in accordance with Section 63 of the ISA and properly proved as required under Section 68 of the Indian Evidence Act, 1872. Learned counsel further contends that the PW-2, the attesting witness, clearly stated that the Testator was of sound mind, that he signed the Will in presence of both witnesses, and that the witnesses attested it in his presence. According to the Respondents, this evidence sufficiently proves due execution.

18. It is further submitted that the Testator was fully conscious and aware of his actions. Shortly before the execution of the Will, he wrote a detailed handwritten note dated 15.10.2012 explaining his reasons for disinheriting the Appellant and independently posted it. Learned counsel submits that the Appellant has not produced any medical record to suggest incapacity.

19. Furthermore, learned counsel also relies on public notices by the Testator disowning the Appellant. He submits that these notices form part of the same chain of events and reflect a consistent intention over time, and not any influence of Respondent No. 2.

20. Further, on the issue of signatures, the Respondents contend that the Appellant has failed to adduce any expert evidence or reliable admitted signatures to support the allegation of forgery. The learned Single Judge rightly held that a mere denial, without supporting material, cannot dislodge the clear testimony of the Attesting Witness.

21. The Respondents submit that the contradictions alleged by the Appellant between PW-2 and DW-2 are not material. It is argued that the



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essential requirements, signature of the Testator and attestation by two witnesses; stand proved, and minor differences in peripheral details cannot invalidate an otherwise valid Will.

22. It is further contended that the Appellant's argument regarding cordial family relations is unsupported by evidence. The Respondents state that the handwritten note, the public notices, and the Will itself clearly record the Testator's reasons for excluding the Appellant, and these reasons have already been accepted by the learned Single Judge.

23. The Respondents also point out that the Testator continued to independently manage his affairs, including visiting the bank and signing documents, even in his advanced age, showing that he remained capable of taking voluntary decisions regarding his estate.

FINDINGS & ANALYSIS

24. Heard learned counsel for the parties at length and with their able assistance perused the paper book, along with the requisitioned record and their written submissions.

25. At the outset, it must be reiterated that proceedings for grant of probate are *sui generis* and in Appeals arising from testamentary proceedings, interference by the Appellate Court is warranted only where the view adopted by the learned Single Judge is perverse, unsupported by evidence, or contrary to well-settled principles governing proof of Wills. Guided by this circumscribed appellate jurisdiction, this Court proceeds to examine whether any such infirmity exists in the present case.

26. This Court notes that the learned Single Judge has carefully examined the evidence of both sides. The Appellant highlights some

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differences in the witnesses' statements, however, Attesting Witness's (PW-2) testimony remains consistent that the Testator signed the Will in his presence and that he attested it accordingly. This satisfies the requirements of Section 63 of the ISA read with Section 68 of the Indian Evidence Act, 1872.

27. It is in this backdrop that the principles laid down by the Supreme Court in *Sridevi v. Jayaraja Shetty*¹, assume relevance, particularly governing how a Will is to be proved and how suspicious circumstances, if any, are to be evaluated:

"11. The onus to prove the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and proof of the signature of the testator, as required by law, need be sufficient to discharge the onus. Where there are suspicious circumstances, the onus would again be on the propounder to explain them to the satisfaction of the court before the will can be accepted as genuine. Proof in either case cannot be mathematically precise and certain and should be one of satisfaction of a prudent mind in such matters. In case the person contesting the will alleges undue influence, fraud or coercion, the onus will be on him to prove the same. As to what are suspicious circumstances have to be judged in the facts and circumstances of each particular case.

12. In the light of this settled position of the law, we have to examine as to whether the will under consideration had been duly executed and the propounders of the will had dispelled the suspicious circumstances surrounding the will.

14. The propounder of the Will has to show that the Will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other."

28. In the case at hand, the Will in question is a notarised document, signed by the Testator on every page and properly attested by two witnesses. The discrepancies pointed out by the Appellant appear to

¹ (2005) 2 SCC 784



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relate more to peripheral details of the signing process rather than to the core act of due execution. On the contrary, the evidence on record, coupled with the Testator's prior independent acts, such as writing the handwritten note on 15.10.2012, issuing public notices disowning the Appellant, and handling his personal work on his own, shows that he was aware of what he was doing and was acting out of his own free choice. All these facts support the finding that the Will was executed voluntarily and not under any pressure or influence.

29. Furthermore, there is sufficient material on record to prove that the Appellant had separated from his parents after purchasing and residing in his Rohini property since the year 1989, which is so admitted by the Appellant himself. Thereafter, the Appellant shirked from his responsibilities towards his aged parents. Moreover, except for bald assertions, the Appellant has failed to lead any cogent evidence to prove undue influence exercised by the Respondent when the Will was executed.

30. The record also reflects that the allegation of forgery is founded principally on evidence tendered by a Canara Bank Official/DW-3 based on an account-opening form of 1982, said to be indicative of differences in the signature. This Court finds that such a comparison by a witness, especially when undertaken across a three-decade gap, cannot form the basis of a finding of fabrication.

31. Furthermore, the Appellant chose not to lead any handwriting expert evidence despite having repeated opportunities, which only reinforces the conclusion that the allegation remained speculative. When natural changes in a person's signature over time are considered, the

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documents relied by the Appellant do not raise any substantial doubt. Seen in this light, the Appellant's attempt to question the Will on the basis of alleged signature differences clearly lacks substance.

32. With respect to the Appellant's claim that the Testator lacked the mental capacity to execute the Will is equally without merit. The Attesting Witness/PW-2 clearly stated that the Testator was alert, responsive, and fully understood the document he was signing, and nothing in cross-examination weakened this testimony. The Appellant has neither led any medical evidence, nor produced any witness to support this allegation. In these circumstances, merely pointing out that the Will was notarized, or that it favours one heir over another, cannot in the absence of any cogent evidence constitute a suspicious circumstance. Therefore, without any credible evidence to the contrary, the presumption is that the Testator possessed full testamentary capacity.

33. In this backdrop, it becomes necessary to recall the principles affirmed by the Four-Judge Bench of the Supreme Court in **Rani Purnima Debi v. Kumar Khagendra Narayan Deb**², which reiterated the propositions laid down in **H. Venkatachala Iyengar v. B. N. Thimmajamma**³ and held that:-

"5.even when where there suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate, though the will might be unnatural and might cut off wholly or in part near relations."

Applying this principle to the present case, in the absence of any reliable evidence of incapacity, coercion, or fabrication, no circumstance remains that can reasonably cast doubt on the due execution of the Will.

² 1962 3 SCR 195

³ AIR 1959 SC 443.



34. Having examined the factual matrix on the touchstone of these principles, it is equally necessary to note the broader legal framework governing cases where a Will is alleged to be surrounded by suspicious circumstances. The Supreme Court in **Kavita Kanwar v. Pamela Mehta**⁴ reiterating the parameters laid down by a Three-Judge Bench of the Supreme Court in **Shivakumar & Ors. v. Sharanabasppa & Ors.**⁵ has summarised the principles governing the adjudicatory process concerning proof of a Will and held as under:-

“24.8... We need not multiply the references to all and other decisions cited at the Bar, which essentially proceed on the aforesaid principles while applying the same in the given set of facts and circumstances. Suffice would be to point out that in a recent decision in Civil Appeal No. 6076 of 2009: Shivakumar & Ors. v. Sharanabasppa & Ors., decided on 24.04.2020, this Court, after traversing through the relevant decisions, has summarised the principles governing the adjudicatory process concerning proof of a Will as follows:-

- 1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.*
- 2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.*
- 3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.*
- 4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The*

⁴ (2021) 11 SCC 209

⁵ AIR 2020 SC 3102



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presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. A circumstance is "suspicious" when it is not normal or is 'not normally expected in a normal situation or is not expected of a normal person'. As put by this Court, the suspicious features must be 'real, germane and valid' and not merely the 'fantasy of the doubting mind.'

7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?

9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial

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conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.”

35. When the present case is examined against the above legal standards, it becomes evident that the Appellant has failed to demonstrate the existence of any real, germane, or valid suspicious circumstance. The Will is duly attested and the attesting witness has supported its execution in material particulars.

36. Furthermore, the Testator's mental capacity has not been rebutted by any medical or other evidence, and the allegation of forgery rests solely on an outdated specimen from 1982 without any expert corroboration. In addition, the dispositions in the Will are also supported by the Testator's prior conduct, including his handwritten note and the public notices severing ties with the Appellant. In these circumstances, this Court finds no fact or circumstance that could reasonably disturb judicial conscience or displace the presumption of regularity attached to the Will's execution.

37. This Court also finds no error in the conclusion of the learned Single Judge that the Respondents have discharged the burden placed on them as propounders of the Will. A perusal of the record reflects that the requirements of due execution, proper attestation, and voluntary action of the Testator stand duly proved. The Appellant, on the other hand, has failed to discharge the burden of establishing forgery, undue influence, coercion, or incapacity, each of which requires positive evidence, and not mere assertions. Therefore, a duly proved Will cannot be set aside on speculative or unverified claims.



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38. It is also appropriate to note that the learned Single Judge has dealt with each objection, with clarity and in conformity with established jurisprudence of this Court and the Supreme Court. The law recognises a Testator's freedom to distribute his property unequally and the Court is not to assess the fairness of the distribution but only the correctness of the execution and the absence of genuine suspicion. This court finds that the approach adopted by the learned Single Judge is consistent with this settled principle.

CONCLUSION

39. In view of the above discussion, this Court finds that the findings recorded by the learned Single Judge are consistent with the evidentiary record and settled testamentary jurisprudence. In the case at hand, the findings do not disclose any perversity, misdirection, or material irregularity warranting interference by this Court. It is pertinent to note that the Appellant has also failed to dislodge the foundation on which the Impugned Judgment rests, thereby showcasing that the grounds urged in the present appeal are devoid of merit.

40. Accordingly, on a comprehensive appraisal of the material on record and for the reasons noted hereinabove, this Court finds no ground to interfere with the Impugned Judgment.

41. In view of the foregoing observations, the present Appeal, along with the pending application, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

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