



2025:DHC:6285



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

% ***Date of Decision: 28th July, 2025***

+ CM(M) 1365/2025, CM APPL. 44860/2025 & CM APPL. 44861/2025
MANISH KUKREJA

.....Petitioner

Through: Mr. Ojas Singh Sachdeva & Ms.
Snigdha Birla, Advs.

versus

SHANTA RANI DECEASED THROUGH LEGAL
REPRESENTATIVE

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending a suit which seeks possession, recovery of damages/*mesne profit* and permanent injunction.
2. The case is at the stage of plaintiff's evidence and plaintiff has already examined 09 witnesses.
3. The defendant (petitioner herein) is aggrieved by order dated 11.06.2025, whereby learned Trial Court has permitted the plaintiff to summon one Mr. Shakeel Ahmed Khan in context of *Will* dated 06.03.2012.
4. Admittedly, as per the averments appearing in the suit, the *Will* in question is a registered *Will* and was executed in presence of two attesting witnesses.
5. Unfortunately, both such attesting witnesses expired, before they could enter into witness box.



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6. It was in the abovesaid peculiar backdrop that the plaintiff moved an application to summon one Mr. Shakeel Ahmed Khan. It was mentioned in the application that said Mr. Shakeel Ahmed Khan was present at the time of execution of *Will*, when it was signed by the testator and the two attesting witnesses.

7. The application was opposed for the reason that there was no whisper about the name of said person when the suit was filed and the abovesaid person has been introduced at a belated stage just to fill-up the *lacunae and the vacuum* which stood created on account of death of both the attesting witnesses. It was also argued that the Section 69 of Indian Evidence Act (corresponding Section 68 of Bharatiya Sakshya Adhiniyam, 2023) could not have been invoked in the manner it has been done. Learned counsel for petitioner has drawn attention of this Court towards the registered *Will* and submits that nowhere, in the abovesaid *Will*, the name of said witness is appearing and he did not even sign the abovesaid *Will* in any capacity whatsoever.

8. Heard.

9. As already noticed, two attesting witnesses of the *Will* are no longer alive and wherever no such attesting witness is available, Section 69 of Indian Evidence Act comes into play which reads as follows:

“69. Proof where no attesting witness found.

If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person.”



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10. Of course, as per requirement of law, *Will* can be proved only through the evidence of, at least, one of the attesting witnesses and since both the attesting witnesses have already expired, plaintiff moved abovesaid application seeking to prove attestation by calling said Mr. Shakeel Ahmed Khan.

11. In case, such said Mr. Shakeel Ahmed Khan is familiar with the signature of either of attesting witnesses, his testimony may have some relevance under Section 69 of Indian Evidence Act.

12. Petitioner relies upon *Moturu Nalini Kanth v. Gainedi Kaliprasad (Dead, Through Lrs.)*, 2023 SCC OnLine SC 1488. Undoubtedly, as per *Moturu Nalini Kanth (supra)*, a random witness cannot be called on the basis of mere assertion that he saw attesting witness affixing his signature on the *Will* but fact remains that the examination cannot be denied, merely, on the basis of contents of application. His eventual examination, before the learned trial Court, would only indicate whether he is merely a random witness or for that matter his testimony has any relevancy in context of Section 69 of Indian Evidence Act.

13. Thus, the things would become clearer only when such witness enters into witness box and makes a deposition.

14. The plaintiff is, actually speaking, in a difficult situation, as far as the aspect of proving *Will* in question is concerned, and, therefore, he made a request before the learned Trial Court to examine one person who was, as alleged, present at the time of execution of such *Will*.

15. Therefore, clearly, the plaintiff needs to be given an opportunity to prove his case with respect to the execution of the abovesaid *Will* as any denial in this regard may, rather, cause serious prejudice to his case.



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16. Moreover, once the abovesaid witness enters into witness box, the defendant is fully entitled to cross-examine and grill such witness on all material points and can demonstrate, through such *cross-examination*, that he was never even present at the time of alleged execution or that his testimony does not fall within the scope and ambit of Section 69 of Indian Evidence Act.

17. Resultantly, finding no illegality or perversity in the impugned order, this Court does not find any compelling reason to invoke its supervisory powers under Article 227 of the Constitution of India.

18. Petition is accordingly dismissed *in limine*.

19. Pending applications, if any, also stand disposed of.

(MANOJ JAIN)
JUDGE

JULY 28, 2025/ck/shs