



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

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Judgment Reserved on: 08.12.2025

Judgment pronounced on: 12.12.2025

+ **FAO 165/2012 & CM APPLs. 6680/2012, 1841/2013, 4447/2017, 4448/2017, 8796/2022, 8797/2022, 8798/2022 & 17973/2024**

PRABHA DEVI

.....Appellant

Through: **Mr. Munish Kr. Singh, Advocate**

versus

STATE & ORS

.....Respondents

Through: **Mr. Vidit Gupta, Mr. Rajesh Bansal, Mr. Navin Bainsla and Mr. Trivesh Sharma, Advocates for LR. of Respondent No.2**

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. The present appeal under Section 299 of the Indian Succession Act, 1925 (the ISA) has been filed by the objector/respondent no. 12 in the probate petition P.C. No. 69/2011 filed under Section 276 and 278 of the ISA on the file of the learned Additional District Judge, South District, Saket Courts,



Delhi, aggrieved by the order dated 30.11.2011 by which the petition was allowed.

2. In this appeal, the parties herein shall be referred to in the same rank as they were arrayed in the original probate petition.

3. Brief facts borne out by the record are: Late Ms. Lakhmi Devi (the testatrix), an unmarried Hindu woman, died on 29.04.1996 at her residence situated, at House No. 1/40498, Village Mochi Bagh, New Delhi. The property comprised of three rooms and appurtenant portions standing on a plot measuring 77 square yards. The testatrix was a teacher in a School of the Municipal Corporation of Delhi.

3.1. The petitioner, being the niece (*bhanji*) of the testatrix, alleged that the testatrix, being her *mausi* was in a sound disposing state of mind and of her own volition, had executed her last Will dated 30.03.1996 bequeathing her immovable property at Mochi Bagh, her savings account in Punjab National Bank, her General



Provident Fund (GPF) account bearing no. T.T. 37680, and her National Savings Certificate exclusively in favour of the petitioner. The said Will has recorded that the testatrix had great love and affection for the petitioner and that the latter was the only one, who cared for her. The Will bears the signature of two attesting witnesses, namely, Sh. Mool Chand and Smt. Maimo Devi.

3.2. The petitioner also asserted that the testatrix had handed over the original copy of the Will in dispute to the petitioner along with the original documents of her property about 20 to 22 days prior to her death. According to the petitioner, after the death of the testatrix, the respondents, who are her close relatives, had no independent place to live and hence on their request, permitted their continued residence in the Mochi Bagh property. The petitioner permitted objectors/respondent nos. 11, 12, and 13 to remain therein as caretakers on humanitarian grounds. Subsequently, disputes arose and hence the probate petition.



3.3. The objectors/respondents 6, 7, 12 and 13 raised objections that the petition was founded on concocted and distorted facts and that the Will dated 30.03.1996 was forged, fabricated and surrounded by suspicious circumstances. The Will does not disclose the place of its execution, and that the parentage and the addresses of the attesting witnesses were not mentioned. The petitioner, after remaining silent for nearly 15 years after the death of the testatrix, has forged and fabricated the Will. They also contended that the petitioner was acting in collusion with respondent nos. 2 to 5 to grab the property of the testatrix.

3.4. According to the objectors/respondents the petitioner has never been close to the testatrix and denied any sort of love and affection between them. It was contended by the objectors/respondents that, it was not the petitioner, who performed the last rites of the testatrix, rather it was respondent no. 13, Kishore, who had performed the *kriya* and the other



ceremonies as he had been treated by the testatrix as her real son. It was also their case that respondent No. 13 had been orally adopted by the testatrix when the former was aged five years, with the permission of respondent nos. 6 and 7, and has been raised by the testatrix in Delhi since then. On the said basis, the objectors/respondents claimed rights over the estate of the testatrix.

3.5. The objectors/respondents also contended that they have been in lawful possession of the Mochi Bagh property right from the beginning and that still they continue to be in lawful possession of the same. They denied the allegation of the petitioner that the latter had permitted them to stay in the property as caretakers.

4. On completion of pleadings, necessary issues were formed by the trial court. Parties went to trial on the basis of the aforesaid pleadings. Evidence was led by both the parties wherein the petitioner examined herself as PW-1 and the attesting witness



Mool Chand was examined as PW-2. Maimo Devi, the other attesting witness passed away before the commencement of the trial. Respondent no. 7, Pratap Singh, the nephew of the testatrix was examined as DW-1, Respondent No. 13, Kishore @ Guddu, contended to be the adopted son of the testatrix was examined as DW-2. Respondent No. 12, Prabha Devi, (the appellant herein), was examined as DW-3. Evidence by way of affidavits were marked as PW1/A, PW2/A, DW1/A, DW2/A and DW3/A. Exhibits were marked as Exhibits P1 to P-5, the death certificate of the testatrix was marked as Exhibit PW1/1, the Original will was marked as Exhibit PW1/2, the receipt of wood purchased for the cremation of the testatrix was marked as Exhibit PW1/3, Copy of the original diary pages of the testatrix was marked as Exhibit PW1/4 and the personal memoranda of the testatrix, as PW1/5.

5. After perusing the records and appreciating the evidence led by both the parties, the trial court granted probate in favour of



the petitioner. Aggrieved by the impugned order, the objector/respondent no. 12 has come up in appeal.

6. It is submitted by the learned counsel for the objector/respondent no. 12 that the Will dated 30.03.1996 is a forged and fabricated document. The learned counsel would place reliance on the Annexure A-8 Report of an Expert, , who opines that the Will is fabricated.

6.1 It was also urged by the learned counsel that there are multiple suspicious circumstances on the face of the Will, which the trial court failed to appreciate, including the Will does not record the place of its execution; that it contains inconsistent particulars regarding the date of the purchase of the property, inasmuch as the testatrix herself states in the Will that the property was purchased on 15.1.1984, whereas the petitioner in the probate petitioner asserts that the purchase took place on 20.09.1984; and that the Will also omits the names and particulars of the attesting



witnesses.

6.2 The learned counsel also submitted that the testatrix treated the objector/respondent no. 12 and respondent no. 13 as her children , and hence, the last rites of the testatrix was performed by respondent no. 13. The learned counsel urged that this close familial relationship makes it unlikely that the testatrix would have excluded them from her estate, thereby requiring the Will in favour of the petitioner to be examined with greater scrutiny.

6.3 It was further submitted that the testatrix was not in a sound disposing state of mind, when the Will was executed. Reliance was placed on the xerox copy of a medical certificate to contend that the testatrix was not in a good state of health. The learned counsel would also rely on certain pages of PW1/4 personal diary of the testatrix to submit that her mental condition was deteriorating.

6.4. The learned counsel would also contend that the



testatrix's affection for the petitioner had diminished over time. It was urged that the petitioner has selectively relied upon favourable entries in the diary while suppressing others, and that the diary as a whole does not support the petitioner's case.

7. *Per contra*, the learned counsel for the petitioner submitted that the expert opinion relied upon by the objector/respondent no. 12 is inadmissible and cannot be looked into, because the expert report was obtained after the impugned order was delivered. It was also emphasised that the expert report has been merely placed as Annexure-8 of the appeal, which was never formally exhibited or proved before the trial court. The learned counsel would also urge that this Court rejected the application dated 14.04.2023 moved by the objector/respondent no. 12 under Order XXVI Rule 10A CPC for appointment of an expert *vide* order dated 30.04.2025. Hence, the expert report is not admissible. It was also submitted that the impugned order suffers from no infirmity calling for an



interference by this Court

8. Heard both sides and perused the records.

9. The principal issue that falls for consideration in this appeal is whether the trial court has erred in granting probate to the petitioner for the Will dated 30.03.1996.

10. Before I proceed to analyse whether due execution and testamentary capacity stand proved, it is necessary to briefly notice the depositions of the material witnesses. PW-1, the petitioner, deposed that she is the niece of the testatrix and that the latter had executed the Will dated 30.03.1996 of her free volition. She deposed that the testatrix handed over the Will and other documents to her 20 to 22 days prior to her death. She identified the testatrix's signatures on the Will (Ex. PW-1/2) and denied the suggestion that the Will was forged or prepared after the death of the testatrix. She also deposed that the diary (Ex. PW-1/5) was recovered from the testatrix's box after her death and that Kishore



(respondent no. 13) and Prabha (the objector/respondent no. 12) have been residing with the testatrix since childhood.

10.1. PW-2, the surviving attesting witness, deposed that the testatrix, his sister-in-law, had read over the contents of the Will to him on 30.03.1996 and thereafter signed it in his presence, followed by the signatures of the second attesting witness, Maimo Devi, and then himself. He stated that only the three of them were present at the time of execution, and that the petitioner was not present. He affirmed that the testatrix was hale and hearty at the time of execution and expressly denied the suggestion that the signatures of the testatrix were obtained on a blank paper later filled in.

10.2. DW-1, Shri Pratap Singh, nephew of the testatrix, deposed that he had lived with her for several years and that he had purchased the suit property in her name by contributing part of the sale consideration. He stated that his son Kishore (respondent no.



13) lived with the testatrix from childhood and was treated by her as an adopted son, though he admitted that no formal adoption ever took place. He also acknowledged that official records continued to show him as Kishore's father. He denied the allegation that the Will was genuine and asserted that the petitioner had prepared a forged document.

10.3. Respondent no. 13, when examined as, DW-2, deposed that he resided with the testatrix from childhood and regarded himself as her adopted son, although he admitted that all official records name Pratap Singh as his father (DW-1) and no document records the testatrix as his mother. He denied knowledge of the number of documents that were taken after the testatrix's death and deposed that the petitioner had removed certain papers. He claimed to have performed the testatrix's last rites. He accepted that the Will mentions "New Delhi" as the place of execution, but denied its genuineness. He conceded that the testatrix had deep affection



for the petitioner.

10.4. DW-3, respondent no. 12, the appellant herein, deposed that she and respondent no. 13, Kishore (DW-2) were raised by the testatrix as her adopted children and lived with her at the suit property, though she admitted that no documentary proof of adoption exists and that all her official records name her biological father, Shri Kanta Prasad. She stated that the testatrix supported their studies and daily needs and denied that the petitioner permitted them to stay as caretakers. She acknowledged that the testatrix and petitioner shared affection, but denied that the Will was ever executed, asserting that it was forged and fabricated by the petitioner after the testatrix's death.

10.5. As noticed earlier, the only contention in the objections filed is that Exhibit PW-1/2, the Will, is forged and fabricated; and that the testatrix had no love or affection for the petitioner. According to the objectors/respondents nos. 12 and 13, they were



adopted by the testatrix and are, therefore, entitled to succeed to her estate. However, insofar as the contention of forgery and fabrication is concerned, there are no specific pleadings to that effect. There was no case set up that the signature of the testatrix on the Will was forged, or that her signature had been obtained on a blank sheet of paper and thereafter fabricated into a Will. Notwithstanding the absence of such pleadings, the suggestion put to PW-2, the attesting witness, during cross examination reads thus:-

“.....It is wrong to suggest that the signature of the deceased were obtained on a blank paper and the contents were written thereafter.....”

10.6. Therefore, what emerges is that the case that is seen to be developed at the evidence stage is that the blank signed papers of the testatrix was converted/fabricated into a Will after her death. However, no such plea was ever taken in the objections filed by



the objectors/respondents.

11. To substantiate the case of forgery and fabrication, reliance was placed on Annexure A-8, stated to be the 'Report' of an expert. A rather striking aspect of this document is, a very interesting query posed to the expert namely: "*Whether the execution of the aforesaid Will is genuine or not?*" The expert has concluded thus:-

"I made a very careful examination of the 'Will' with the aid of the magnifying lenses and the flash magnifiers as well as with the supplied photostate and with it's enlarged photograph taken with digital camera by me is being submitted after due marking with this Report....."

"After due scientific comparison and examination, I am of the opinion that the execution of the 'Will ' is not genuine as is executed/typed over a already/prior signed paper. My this opinion is based on the force of the following scientific reasons-



.....”

11.1. Thereafter, the ‘expert’ goes on to give reasons for his conclusion. The learned counsel for the objector/respondent No.12 was unable to explain the provision of law under which such a report could be rendered admissible in evidence.

12. Here I refer to Section 45 of the Evidence Act, 1872 (the Evidence Act), which reads as follows:-

*“45. **Opinions of experts.**—When the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.*

Such persons are called experts.”

(Emphasis Supplied)

12.1. A reading of the aforesaid provision makes it clear that



the opinion of an expert is sought when the Court is required to form an opinion upon a point of foreign law, science, art, or regarding the identity of handwriting or finger impressions. The query that has been posed to the ‘expert’ does not fall within the ambit of Section 45 of the Evidence Act. As noticed earlier, the objector/respondent No.12 does not have a case in the counter/objections that the petitioner had forged or fabricated the signature of the testatrix appearing on the Will. The expert was never asked to compare the signature in the disputed Will with that of any admitted signature(s) of the testatrix to ascertain whether the signature on the Will is genuine or not. Instead, the expert was asked to opine on: “whether the Will is genuine or not”. That does not fall within the domain of an expert. The said question needs to be decided by this Court on the basis of the evidence on record.

12.2. It must also be noted that this Court, *vide* order dated 30.04.2025, dismissed the application dated 14.04.2023 moved by



the objector/respondent no. 12 under Order XXVI Rule 10A CPC seeking appointment of an expert for examination of the Will. Annexure A-8 report appears to have been obtained by the objector/respondent no. 12 on her own. For the aforesaid reasons, the report cannot be looked into.

13. In the objections filed, there is only a vague and unsubstantiated plea that the Will is forged and fabricated. There is no assertion therein that blank paper(s) bearing the signature of the testatrix was subsequently fabricated into a Will by the petitioner after the death of the former. Significantly, when the petitioner entered into the witness box and examined herself as PW-1, no such case was put to her by the objectors/respondents. Not even a suggestion was put to her that she had forged the signature of the testatrix. The only suggestion put to her were general allegations with respect to forgery and fabrication. It is only at the stage when PW-2, the attesting witness, was in the box, a new story emerged



that it was a blank signed paper which was converted into the Will in question. It is well settled that no amount of evidence can be looked into a plea never put forward. In the present case, there are neither pleadings nor the evidence to show that the Will was forged or fabricated in a blank signed paper of the testatrix.

14. It is true that the Will is of the year 1996 and the probate petition came to be filed in the year 2011, that is, after a lapse of nearly 15 years. However, the petitioner has given an explanation for the delay. According to her, the respondents were permitted to reside in the property as caretakers and that initially there were no issues. Thereafter, quarrels and disputes arose between the parties which resulted in the filing of the probate petition. On the facts and circumstances, the explanations furnished by the petitioner appears quite plausible.

15. Further, there is no specific or definite plea in the objections that the testatrix was not in a sound disposing state of



mind. It is only stated that she had several ailments. What exactly were the ailments, has not been pleaded or proved. The only medical material relied upon is a xerox copy of a certificate showing that the testatrix was admitted to hospital with routine ailments relatable to age. The certificate does not record any cognitive impairment, nor was the doctor examined to establish mental incapacity. Mere illness, physical weakness or emotional distress cannot, in law, negate a person's sound disposing state of mind. This Court, in **Nirmal Batla & Ors. v. State, 2025:DHC:10881**, has reiterated that a testator need not be in perfect health for a Will to be valid; physical frailty does not eclipse testamentary competence so long as the testator comprehends the nature of the act and the disposition intended. The decision in **Gordhandas Nathlal Patel v. Bai Suraj, AIR 1921 Bom 193; Chhanga Singh v. Dharam Singh, AIR 1965 P&H 204; and Har Narain v. Budhram, 1991 SCC OnLine Del**



351 likewise affirm that even a testator suffering from serious physical limitations may execute a valid Will if he/she is in a sound disposing state of mind. In the present case, PW-2, the attesting witness, categorically affirmed that the testatrix was fully conscious, aware, and had voluntarily executed the Will, and his testimony remained unshaken in cross-examination. Once the statutory witness attests to a competent, conscious execution, unsubstantiated contentions of ill health cannot be elevated to suspicious circumstances.

16. The diary (Ex. PW-1/5) was introduced by the petitioner herself and contains both affectionate and frustrated expressions of the testatrix. Respondent no. 12/the appellant selectively relies on entries where the testatrix appears distressed or disheartened in her interpersonal relationships. The absence of confrontation of these diary extracts to PW-1 during trial fatally undermines their probative worth against the petitioner. A diary is an introspective



record, and occasional disappointment or emotional fluctuation does not amount to a deterioration of testamentary capacity nor establish hostility towards the petitioner. Indeed, nothing in the diary is inconsistent with the testatrix retaining affection for the petitioner, much less with the voluntariness of executing the Will.

17. The alleged adoption of respondent no. 13 and respondent no. 12/the appellant is unsupported by any document, ceremony, or contemporaneous record. Official documentation uniformly shows respondent no. 7, Pratap Singh (DW-1) as the biological father of DW-2 (respondent no. 13), and respondent no. 12/the appellant as the daughter of Kanta Prasad. The contention that Respondent No. 13 performed the last rites also does not aid respondent no. 12/the appellant. Further, it is also apposite to note that the objector/respondent no. 12's cross-examination of PW-1 contained a crucial suggestion, which reads thus:

“It is incorrect to suggest that I had taken the possession of



Will, documents and a diary after the death of my mausi forcefully. Vol. the children had given the same to me.”

(Emphasis Supplied)

17.1. This suggestion, emanating from the respondent/objectors, presupposes that a Will already existed at the time of the death of the testatrix. Such a suggestion irreconcilably contradicts the foundational allegation that the Will was fabricated by typing matter over a pre-signed blank sheet after the death of the testatrix. The appellant’s own evidence thereby destroys her core plea.

18. In view of the aforesaid circumstances, the Will in question stands proved in accordance with Section 63(c) of the ISA and Section 68 of the Evidence Act. The trial court rightly appreciated the materials on record and found no suspicious circumstances warranting rejection of the Will.

19. Hence, the appeal sans merit, is dismissed.



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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

DECEMBER 12, 2025