



2025:DHC:2296-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 03.04.2025*+ RFA(OS) 68/2024  
PYARE LAL GUPTA

.....Appellant

Through: Mr. Rajiv K. Garg, Mr. R. K.  
Bedi and Mr. Aayush Agrawal,  
Advs.

versus

SOM BALA ALIAS SUMAN KHANDELWAL &amp; ORS.

.....Respondents

Through: Mr. Mohit Aggarwal, Mr.  
Deepak Singh Poonia, Mr.  
Bhuvan Shekhar and Ms. Pooja  
Saini, Advs. for R-1.Mr. Amit Malik, Ms. Anu  
Kushwaha, Mr. Rajat Sangeliya  
and Mr. Harshit Saini, Advs. For  
R-3 and 4.Mr. KK Nangia and Mr. SP  
Nangia, Advs. for R-5 & 6.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE RENU BHATNAGAR****NAVIN CHAWLA, J. (Oral)****CM APPL. 73097/2024**1. For the reasons stated in the application, the delay of 140 days  
in filing the appeal is condoned.

2. The application stands disposed of.

**RFA(OS) 68/2024 AND CM APPL. 73096/2024**3. This appeal has been filed by the appellant under Section 96  
read with Order XLI of the Code of Civil Procedure, 1908 (hereinafter



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referred to as, 'CPC') read with Section 10 of the Delhi High Court Act, 1966, challenging the Preliminary Decree dated 02.08.2022 and the Final Decree dated 11.11.2022 passed by the learned Single Judge of this Court in CS (OS) 2152/2014 (hereinafter referred to as, 'the suit') titled ***Som Bala @ Suman Khandelwal v. Pyare Lal Gupta & Ors.***

4. Brief background of the appeal is that the above suit had been filed by the respondent no. 1 herein, seeking a decree of partition, declaration, demarcation, possession, mesne profits and other consequential reliefs with respect to following immovable properties-

*(i) Entire Built-up House/property Nos. 10144, 10145, 10146 & 10147, Library Road, Azad Market, Delhi-110006 and;*

*(ii) Entire Built-up House/property No. 10156, Gali Gandhak Wali, Nawabganj, Pul Bangash, Azad Market, Delhi-110006; (Both the properties are hereinafter referred to as, 'the suit property').*

5. It was the case of the respondent no. 1 before the learned Single Judge that the suit properties were self acquired properties of Late Sh. Durga Prasad Gupta, the father of the parties to the suit, who are all siblings. He died intestate on 18.03.1988, leaving behind the parties to the suit as only legal heirs. The respondent no. 1, therefore, prayed for the above relief in the suit.

6. The appellant herein, on the other hand, contested the above suit by claiming that Late Sh. Durga Prasad Gupta had left behind a Will



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dated 25.10.1986, in terms whereof, the suit properties had been bequeathed in favour of the appellant.

7. Admittedly, the original copy of the said Will was not produced before the learned Single Judge in the suit. Even the alleged attesting witnesses to the said Will were not produced in evidence. The Will, therefore, remained unproved. The learned Single Judge, therefore, passed the Preliminary Decree, observing that there was no defence to the suit.

8. The learned counsel for the appellant submits that the respondents had, in fact, admitted to the Will and based thereon, had executed “No Objection Certificates” (hereinafter referred to as, ‘NOC’) giving their no objection to the mutation of the suit properties in favour of the appellant.

9. He further submits that the witnesses to the Will were not available and, therefore, could not be produced before the learned Single Judge in evidence.

10. He submits that the respondent no. 1 having prayed for a Decree of declaration declaring the Will dated 25.10.1986 as null and void, the onus of proof for the same lay on the respondent no. 1, which she has failed to discharge. He further submits that the respondent no. 2 had also admitted to the Will.

11. On the other hand, the learned counsels for the respondent nos. 1, 3, 4, 5 and 6 oppose this appeal by contending that the onus of proving the alleged Will lies only on the appellant, who is the propounder and the sole beneficiary thereunder. They submit that the Will was not proved in accordance with the Section 63 of the Indian



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Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872 (corresponding Section 67 of the Bharatiya Sakshya Adhiniyam, 2023), and therefore, the learned Single Judge has rightly passed the Preliminary Decree *vide* Judgement dated 02.08.2022. He further submits that this belated challenge to the Preliminary Decree should not be sustained.

12. We have considered the submissions made by the learned counsels for the parties.

13. The appellant being the propounder and sole beneficiary of the alleged Will dated 25.10.1986 of Late Sh. Durga Prasad Gupta, the onus of proving the due execution thereof in accordance with Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872 (corresponding Section 67 of the Bharatiya Sakshya Adhiniyam, 2003), lies only on the appellant. He cannot pass this onus on to the respondents. The appellant miserably failed to discharge this onus inasmuch as, he did not produce the alleged attesting witnesses to the said Will. Even the original Will was not filed before the learned Single Judge in the suit.

14. The submission of the learned counsel for the appellant that the alleged witnesses to the impugned Will were not traceable, is also not supported by any evidence on record.

15. The reliance of the learned counsel for the appellant on the NOC can also be of no avail to the appellant. The said NOC does not make reference to the alleged Will. As has been repeatedly held, the mutation of the suit properties is only for the purposes of payment of taxes and does not confer any title on any person. The said NOC,



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therefore, cannot be deemed to be an acceptance of the impugned Will by the respondents.

16. The plea of the learned counsel for the appellant that the respondent no. 2 had admitted to the Will, also cannot help the appellant. The onus of proving the Will does not get discharged only because one of the parties and a co-defendant admits to the Will. Once the respondent no. 1 had challenged the Will, it had to be proved by the appellant in accordance with law. Having failed to do so, and as no other defence was offered to the suit for partition filed by the respondent no. 1, the Suit was rightly decreed by the learned Single Judge.

17. We, therefore, find no infirmity in the Impugned Judgment dated 02.08.2022 passing the Preliminary Decree by holding all seven parties to the suit to have 1/7<sup>th</sup> share in the suit properties.

18. As far as the Final Decree dated 11.11.2022 is concerned, the challenge is founded on the same submissions as to the Preliminary Decree. Once the said challenge has failed, there is no challenge left to the Final Decree dated 11.11.2022 as well.

19. Accordingly, we find no merit in the present appeal. The same, along with the pending application, is dismissed.

**NAVIN CHAWLA, J**

**RENU BHATNAGAR, J**

**APRIL 3, 2025/p/kg/ik**

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