



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

% **Judgment reserved on : 11 March 2025**
Judgment pronounced on : 25 March 2025

+ **FAO 319/2007 & CM APPL. 6527/2008**

MRS. RAMA ALAGH & ORS.Appellants
Through: Mr. Rakesh Saini, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) & ORSRespondents
Through: Mr. Deepak Tyagi and Mr. Ishan
Seth, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. This First Appeal has been preferred under Section 299 of the Indian Succession Act, 1925 [**“The Act”**] by three sisters, the third one now being represented through her legal heirs, assailing the impugned judgment dated 24.05.2007 passed by the learned Additional District Judge, Delhi [**“Probate Court”**], whereby the second Will propounded by them dated 16.06.1992 executed by their late father, Shri Jagdish Chander Mehra [**“testator”**] has been found to be forged and fabricated, and on the other hand, the first Will dated 31.01.1989 propounded by respondent No.2, Smt. Savita Malhotra, the daughter-in-law of the deceased testator, in favour of respondents No. 3 to 6 has



been probated and held to be the last legally executed Will of the testator.

FACTUAL MATRIX:

2. Briefly stated, the testator was admittedly the owner of the property bearing No. D-1/24-25, Lajpat Nagar-I, New Delhi-110049 [“**subject property**”] who passed away on 20.01.1993 leaving behind his one son, namely respondent No.4 Mr. Ashok Malhotra, widow of his second son viz., respondent No.5 Savita Malhotra and her children, besides three daughters, namely appellant No.1, Smt. Rama Alagh, appellant No.2 Smt. Sharda Kapoor and appellant No.3, Smt. Usha Rani (who has since died and is now represented through her legal heirs). It is pertinent to mention here that the second son Mr. Krishan Gopal Mehra predeceased the testator and his widow Smt. Savita Malhotra also died on 14.07.2022 during the course of proceedings. It also appears that the whereabouts of respondent No.4, Mr. Ashok Malhotra are not known for more than 10 years now.

3. In the aforesaid backdrop, on the demise of the testator on 20.01.1993, the chronology of the events and broad facts are not in dispute. It is borne out from the record that appellant No.1 Smt. Rama Alagh filed a suit for injunction¹ against Smt. Savita Malhotra, daughter-in-law of the testator and her children, besides other siblings including her sisters, to restrain them for selling, alienating or parting

¹ Suit No. 100/1993



with the subject property after the demise of her father, claiming that he had died intestate. It is also borne out from the record that on issuance and service of summons for settlement of issues, the defendant No.1 Smt. Savita Malhotra, the daughter-in-law of the testator, filed her written statement on 15.07.1993 for herself and her two minor children and she propounded the first Will dated 31.01.1989, purportedly executed by her deceased father-in-law i.e. the testator. A replication was filed by the plaintiff i.e., appellant No.1 Smt. Rama Alagh, in the said Suit, thereby denying the execution of the Will dated 31.01.1989 and its validity.

4. It is also a matter of record that the defendant No.4/appellant No.2 Smt. Sharda Kapoor filed her written statement on 15.12.1993, wherein she propounded the second Will dated 16.06.1992 according to which right, title and interest in the subject property had been bequeathed to each of the five children equally by the testator i.e. to the extent of 1/5th each. It is an admitted fact that during the pendency of the said suit, the appellants/sisters filed the instant petition under Section 276 of the Act bearing PC No. 180/2006 on 25.04.1994, seeking probate of the second Will dated 16.06.1992 purportedly executed by their father. The suit was dismissed as withdrawn by the plaintiff/appellant No.1 on 16.09.1994.

5. As a counter-blast to the aforesaid probate petition, Smt. Savita Malhotra and her two children too filed a probate petition bearing PC No. 181/2006 on 14.01.1997 and both the petitions were consolidated



vide order dated 05.01.2001 by the Probate Court. The parties led their evidence on the matters in issue. Needless to state, the only issue framed was as to which of the Wills was executed by the testator in a sound disposing state of mind and was his last Will and testament?

6. Insofar as respondent No.1 Smt. Savita Malhotra is concerned, she examined three witness, *viz.*, PW-1 Mr Ramesh Chand, Record Clerk from the office of Sub-Registrar who deposed as to the execution of the registered Will dated 31.01.1989 Ex.PW-3/1; and PW-2 was Mr. Gopal Kapoor, who identified the signatures of his father, namely Mr. Jagdish Chander Mehra, on the original Will since the latter had passed away (who was incidentally the father of Mrs. Savita Malhotra); and PW-3 was Smt. Savita Malhotra herself. On the other hand, two witnesses were examined on behalf of the appellants in the present matter, *viz.* PW-1 Mr. I.S. Rekhi who deposed as to the circumstances that led to execution of the Will dated 06.06.1992 purportedly executed by the testator and PW-2 was Mr. Darshan Singh, the Special Attorney Holder of Smt. Rama Alag, and who was incidentally the husband of deceased appellant No.3 Smt. Usha Rani, daughter of the deceased testator.

IMPUGNED JUDGMENT

7. The Probate Court *vide* impugned common judgment dated 24.05.2007 found that the execution of Will dated 31.01.1989, which was in fact a registered one, had been admitted by the opposite party and also duly proved by the attesting witnesses. It was also held that



although the subsequent Will dated 16.06.1992 *inter alia* revoked the earlier Will dated 31.01.1989, however, the testimony of PW-1 I.S. Rekhi was found not to be carrying weight and lacking credibility. Thus, while observing that the execution of the second Will dated 16.06.1992 was surrounded with a lot of suspicious circumstances considering that soon after the death of testator, his daughter Smt. Rama Alagh filed a civil suit against Smt. Savita Malhotra, widow of her pre-deceased brother, in which the Will dated 16.06.1992 was not propounded by her but later on propounded by her sister Smt. Sharda Kapoor; and in light of the fact that both Smt. Rama Alagh and Smt. Sharda Kapoor did not appear in the witness box and failed to explain the circumstances under which the second Will was allegedly handed over to one Mr. Ram Kapoor by the testator, who was not examined (rather died before evidence could be led), the learned Probate Court held that the second Will dated 16.06.1992 Ex.PW-1/1 was not the genuine and last Will of the testator but a forged and fabricated one, while the first Will dated 31.01.1989 Ex. PW3/1 propounded by Mrs. Savita Malhotra was held to be the last and final testament.

LEGAL SUBMISSIONS ADVANCED BY THE LEARNED COUNSELS FOR PARTIES:

8. In short, learned counsel for the appellants has urged that the first Will dated 30.01.1989 Ex.PW-3/1 was propounded by the respondent Smt. Savita Malhotra for the first time on filing of written statement on 15.07.1993 and on coming to know that Smt. Sharda Kapoor, the



defendant No.4/appellant No.2 had propounded the Will dated 16.06.1992 during the proceedings on 15.12.1993, the limitation period for seeking probate of the first Will dated 31.01.1989 commenced from 15.12.1993 or in the alternative, from the date of death of the testator on 20.01.1993. It was vehemently urged that filing of the probate petition by Smt. Savita Malhotra and her legal heirs, besides family of other son Mr. Ashok Malhotra on 14.01.1997 in terms of Article 137 of the Limitation Act. It was further urged that none of the attesting witnesses were examined in the present matter in terms of section 68 of the Indian Evidence Act, 1872, and it was PW-2 Mr. Gopal Kapoor who only mechanically affirmed the signatures of his deceased father i.e., the testator who happened to be father of the beneficiary Mrs. Savita Malhotra. It was urged that there were made no efforts to examine the second witness and nothing was brought on the record to show that second witness was unable to appear. It was urged that there was an absolute failure on the part of the opposite property to prove their case in terms of Section 63(c) of the Indian Succession Act, 1925, as well as Section 68 of the Indian Evidence Act, 1872².

9. In his submissions, learned counsel for the appellants has relied on the decisions in **Kunvarjeet Singh Khandpur v. Kirandeep Kaur**³; **Pamela Manmohan Singh v. State**⁴; **Pratap Singh v. State**⁵;

² IEA

³ (2008) 8 SCC 463

⁴ 83(2000) DLT 469

⁵ 2010 VII AD (Delhi) 490



Yumnam Ongbi Tampha Ibemma Devi v. Yumnam Joykumar Singh⁶; Benga Behera v. Braja Kishore Nanda⁷; Bharpur Singh v. Shamsher Singh⁸; Janki Narayan Bhoir v. Narayan Namdeo Kadam⁹; and Doraiswami v. Rathnammal¹⁰.

10. *Per contra*, learned counsel for the respondents urged that although the issue of limitation was not canvassed before the Probate Court, he acknowledged the legal proposition of law that the issue of limitation goes to the root of the matter and is a jurisdictional issue. Having said that, he urged that the real question to be determined is from which date the limitation started to run in the present case. Pointing out that the suit was filed on 04.05.1993 and written statement by Smt. Savita Malhotra was filed on 15.07.1993 propounding first Will dated 31.01.1989 Ex.PW-3/1, it was submitted that the instant petition was surprisingly filed by the appellants through their Special Attorney Holder, namely Mr. Darshan Khanna, who happens to be the husband of the deceased sister Smt. Usha Rani/LR of appellant No.3. It was urged that the limitation period for filing of the probate petition by them only started running when the sisters propounded the second Will dated 16.06.1992 Ex.PW-1/1 in the probate petition *inter alia* seeking revocation of the earlier Will dated 31.01.1989 and from that point of view, the probate petition filed on 14.01.1997 was within the prescribed

⁶ JT 2009(4) SC 307

⁷ (2007) 6 SCR 853

⁸ JT 2009 (1) SC 590

⁹ AIR 2003 SC 761

¹⁰ AIR 1978 Madras 78



period of limitation. It was vehemently urged that no suit was filed by the appellant so as to seek declaration to nullify the legal validity and import of the first Will dated 31.01.1989.

11. Taking this Court through the entire narrative of the impugned judgment, it was urged that the execution of the first Will was admitted by the appellants. Learned counsel further alluded to the observations made by the learned Probate Court that the second Will dated 16.06.1992 appeared to have been executed under suspicious circumstances in as much as the key witnesses did not turn up in the evidence. Lastly, it was urged that the appellants have only sought a relief to set aside the probate of the first Will dated 31.01.1989 in their favour but have not sought any relief so as to get the second Will dated 16.06.1992 probated in favor of the appellants.

ANALYSIS & DECISION:

12. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties. I have also perused the oral and documentary evidence led which is placed on the record.

13. First things first, it would be appropriate to reproduce the two Wills which have been executed in the present matter and are the bone of contention between the parties. The first Will dated 31.01.1989 Ex.PW-3/1 is as follows:-

“WILL

This WILL IS MADE BY me, Jagdish Chander Mehra S/o
Late Lal Janki Nath Mehra, resident of D-1/24-25, Lajpat Nagar,
New Delhi.



WHEREAS I am owner of House No. D-1/24-25, Lajpat Nagar, New Delhi-110024 and whereas I am an old man and as such I have decided to make a Will of my above said property. I hereby devise and bequeath that the said property shall devolve on my legal heirs as under:-

- (1) My son Krishan Gopal Malhotra;
- (2) Smt. Savita Devi w/o Sh. K.G. Malhotra;
- (3) Rishi Malhotra s/o Sh. K.G. Malhotra; and
- (4) Miss Salini D/o Sh. K.G. Malhotra.

Shall become the absolute owner of the ground floor and half barsati of the said house after my death.

The first floor of the said house and half barsati shall devolve on my son namely, Ashok Malhotra after my demise.

In addition to my above said legal heirs, I have three married daughters. I am not leaving any property and any share in the said house to any of my married daughters.

AND HENCE my married daughters shall not claim any right, title or interest in my property after my death. My intention in making this Will is quite clear and capable of no other interpretation except that I want to bequeath the property in the manner detailed above. This Will is final and irrevocable.

I have made this Will voluntarily, without any outside pressure or undue influence from any quarters whatsoever. The contents of the Will have been read out me and the same have been admitted by me as correct.

IN WITNESS WHEREOF, I have put my signatures on this Will on 31st day of January, 1989 in the presence of the following witnesses who have also signed this Will in my presence.”

14. Further, the second Will dated 16.06.1992 Ex.PW-1/1 reads as under:-

“This will is reduced into writing on this, the 16th day of June, 1992 by me, Jagdish Chander Mehra, son of late Shri Janki Nath, R/o D-24-25, Lajpat Nager-I, New Delhi.

I am in sound mind and sound health but getting old day by day. I fully understand the implications of what I am conveying by this WILL.

I would like to mention here that prior to this, I had executed a Will on 31st day of January, 1989. As a matter of fact, the said



Will was got executed by me after lot of undue pressure. At that time, as I was compelled to execute the said Will, I could not object to the property being given to my two sons. After getting the Will executed, my both the sons became selfish, greedy and started quarrelling with me and among themselves and wanted to sell my house to grab the whole sale proceeds and deprive me of everything. Unfortunately, due to disputes, my elder son, Krishan Gopal Malhotra committed suicide on 12.3.1992. After his death, his wife and her children became quite disobedient and dis-respectful and none of them is looking after me. My younger son, Ashok Malhotra has been charged by the police for committing criminal offences under Section 306 IPC for provoking his brother to commit suicide and has been put behind the bar. Since there is a lot of circumstantial changes I have decided to execute this Will, without going into the question of legality and validity of the earlier WILL dated 31st January, 1989. I, therefore, in supersession of the earlier WILL dated 31st Jan., 1989, wish and declare that my this Will dated 16th June, 1992 being the final and last shall prevail.

I have three daughters, namely, Usha Kani, Sharda Kapoor and Rama Alag and two sons, namely, Ashok Malhotra and late Krishan Gopal Malhotra, who was not earning anything, addicted to so many dirty things and has expired on 12.3.1992 leaving behind his legal heirs as

- i) Savita Devi, wife of late krishan Gopal Malhotra.
- ii) Rishi Malhotra, son of late Krishan Gopal Malhotra.
- iii) Salini (Shalu) d/o late Krishan Gopal Malhotra.

I am owner of the said house which was built on the plot No.D-24-25, Lajpat Nagar-I, New Delhi. This house was built in the year 1971-72 from the common funds collected by myself and my said three daughters. Nothing was contributed by my sons as they do not earn anything.

I hereby bequeath and give the aforesaid house 1.0. D-24-25, Lajpat nagar-I to all my five children (one dead and four alive) equally. After my death this house will devolve absolutely to my all the said five children in equal shares. The fifth share of this house which should have been given to my son, late Krishan Gopal Malhotra, be now given to his all the three legal heirs, i.e. his wife, Savita Devi, his son, Rishi Malhotra and his daughter, Salini equally.

IN WITNESS WHEREOF, I set my hands on this, the 16th day of June, 1992 in the presence of the following witnesses who have signed this WILL before me.”



15. At this juncture, it would also be appropriate to reproduce the reasons that prevailed in the mind of the Probate Court while passing the impugned common judgment dated 24.05.2007, which go as under:

“The only question for consideration in this case is that which of the two wills propounded by the opposite parties i.e. the will dated 31.1.1989 or 16.6.1992 is the last and genuine will of the deceased. To prove the will dated 31.1.1989 three witnesses were examined. PW.1. Ramesh Chand brought the summoned record of the will which was registered in the office of Sub-Registrar vide registration number 459 in additional book number III, volume number 486 at page number 70 on 31.1.1989. He placed on record the certified copy of the registered will. PW2 Gopal Kapoor, son of late Krishan Dass Kapoor deposed that his father died in September 1992. He had seen him writing and signing. He identified the signature of his father on the will dated 31.1.1989. He also signed in the office of Sub-Registrar at point B. In cross examination he deposed that his father was samdhi of Jagdish Chander Mehra. He is the real brother of the petitioner. He was not present at the time of execution of the will dated 31.1.1989. There is nothing material in his cross examination. PW3 Savita Malhotra filed her affidavit wherein she deposed that Jagdish Chander Mehra was a self supporter and was not dependant on any of his legal heir's. He was in sound disposing mind. During his lifetime he purchased plot number D-24-25. Lajpat Nagar, New Delhi from Government of India. The construction was raised by him at his own expenses. Krishan Gopal was residing with him alongwith his family members and petitioner Savita Malhotra served Jagdish Chander Mehra during his lifetime. He executed a will without any force or pressure. She proved the original will Ex.PW3/1. She proved the death certificate of Jagdish Chander Mehra Ex PW2/2. She identified the signature of Jagdish Chander Mehra on the original will at point A. **Her cross examination is material wherein she deposed that neither she nor any of her child was present in the office of Sub-Registrar at the time of registration of the will.** The testator was aged about seventy five years at the time of executing the will. **The will Ex.PW3/1 was handed over to her by her father-in-law in the second week of January 1993. Testator expired on 19.1.1993.** He was admitted in the hospital three-four days before his death. She was not aware of the execution of the will till it was handed over to her by her father-



in-law. Her father and brother also never told her about the execution of the will. Her husband expired before the death of the testator. Ashok Malhotra was in judicial custody at the time of death of testator. Ashok Malhotra was sent to jail because there was a dispute over the suit property between him and her husband. **Further she deposed that her father-in-law was not willing to sell the property and her dewar Ashok Malhotra threatened her husband that if he would not sell the property in the market he would kill him. There used to be quarrels between her husband and her dewar over the suit property. Her husband committed suicide by setting himself ablaze. She also showed her ignorance whether her husband and her dewar were drug addicts and they used to quarrel with their father. She showed her ignorance about the execution of will by her father-in-law on 16.6.1992 as he was fed up with his son Ashok Malhotra as well as his daughter-in-law Savita Malhotra. She also denied the suggestion that the will was got executed by them from their father-in-law by exerting undue influence and pressure on him. She also denied the suggestion that she was aware of the execution of the will since its execution.**

The only attesting witness of the will examined on behalf of Rama Alag is I.S. Rekhi who deposed that he knew Jagdish Chander. He was resident of D-24-25, Lajpat Nagar. He used to meet Jagdish Chander at Gurudwara near Krishna market, Lajpat Nagar where they became friends. Jagdish Chander told him that father in law of his son got executed a will in 1989 against his wishes. One of his son committed suicide. He also told him that his daughter-in-law was not looking after him. He expressed his desire to execute another will before his death. **On 16.6.1992 the will was executed by Jagdish Chander in Gurudwara, Krishna market. One Dr. Sehkia, Ram Kapoor and one lady Sharda Devi were also present there. Jagdish Chander handed over the will to him. He read the contents of the will in the presence of all those persons. First of all the will was signed by Jagdish Chander. Thereafter it was signed by this witness I.S. Rekhi and then it was signed by Dr. Sehkia, Ram Kapoor and Sharda Devi.** After seeing the original will this witness identified his signature at point B and signature of testator at point A. He proved the original will Ex.PW1/1. Further he deposed that Jagdish Chander was of sound disposing mind and was physically sound. In cross examination he deposed that he used to visit the Gurudwara occasionally where he used to meet the testator. He was not knowing any of his family members or relations. The will was executed at about 9:30 a.m. He



denied the suggestion that he signed the will as attesting witness because of having friendly relations with Darshan Khanna, son-in-law of the deceased. He also denied the suggestion that the will was forged.

PW 2 Darshan Singh proved the special power of attorney in his favour which is Ex.PW2/1 and deposed that Jagdish Chander died in Delhi on 20.1.1993. His death certificate is Ex.PW2/2. He was having three daughters and two sons. He executed two wills. First will was executed on 31.1.1989 and the second and last will was executed on 16.6.1992. First will was cancelled by the deceased at the time of executing the second will. He cancelled his first will because after execution of that will behaviour of his sons and daughters-in-law changed. The testator told him that the first will was got executed from him by force by father of Savita Malhotra. Ashok Malhotra is jobless and is of bad character. Both the sons of Jagdish Chander were not working. They were drug addicts and they used to extract money from the deceased. He was not happy with his sons. Second will was executed by him out of the free will and without any pressure. **At the time of execution of the will one Ram Kapoor, son of his real sister was present and the will was handed over to him after execution. Ram Kapoor disclosed the execution of will by the deceased after completion of one year to Rama Alag and Sharda Kapoor. He handed over the original will to Sharda Kapoor who handed over the same to the petitioner. Till then nobody was aware about the execution of the said will.** The material part of his cross examination is that petitioner is herself resident of Delhi having two sons. Her husband is working in the office of Sub-Registrar. He is accounts officer there. He denied the suggestion that the last will was forged by him.

Now the question is that which of the two wills is a genuine document. Execution of will dated 30.1.1989 is admitted by all the respondents. That is a duly registered will registered in the office of Sub-Registrar on the day of its execution itself. Even the respondents while admitting the execution of this will made out a case that after execution of the will both the sons were quarreling amongst themselves. They were pressurizing the father to sell his property. There used to be frequent quarrels between them and ultimately his elder son committed suicide and an FIR U/s 306 IPC was lodged by Savita Malhotra against his second son Ashok Malhotra. Their case is that after the change in circumstances late Jagdish Chander executed another will on 16.6.1992. The execution of the first will stands proved. The signature of the testator and of the attesting



witnesses on the will have been duly proved. Even otherwise it is a registered document. Savita Malhotra deposed that the will was handed over to her by her father-in-law himself during his lifetime. **Once the execution of the will dated 31.1 1989 is admitted and proved, the question is whether it was revoked by the will dated 16.6.1992 or the will dated 16.6.1992 is a forged document PW1 I.S. Rekhi has proved that it was signed by him as well as by the testator.** He has not proved the signature of any other person on this will though he specifically deposed that all other persons present there signed the will in his presence. **But there are certain suspicious circumstances in which the second will is propounded and those suspicions have not been removed by Rama Alag. The circumstances the evidence and the contents of the wills suggest that both the sons were drug addicts and were not good sons. In spite of the fact that elder son was married, even in the first will dated 31.1.1989 fifty percent share in the property was not bequeathed in favour of Krishan Gopal. It was bequeathed in favour of Krishan Gopal, his wife and two children equally and the remaining fifty percent was bequeathed in favour of second son Ashok Malhotra.** To that extent it is clear that the petitioner never wanted to trust his sons only. But at the same time, he made his intention clear that he was not bequeathing anything in favour of his daughters because they were married and well settled. **The suspicion about the second will is that immediately after the death of the testator Rama Alag filed a civil suit against Savita Malhotra wherein no mention of the will dated 16.6.1992 was made and when Savita Malhotra propounded the will in that civil suit, the civil suit was withdrawn by Rama Alag. Subsequently she filed this probate petition and to fill up the lacuna, the case is made by PW Darshan Singh that the original will was handed over to Ram Kapoor, nephew of the testator, immediately after its execution and he handed over the will to Sharda Kapoor after completion of one year of the death of the testator. Testator died on 20.1.1993 The will was handed over to Sharda Kapoor on any date after 20.1.1994 and this petition was filed in April 1994. The original will was handed over to Sharda Kapoor. She handed over the will to Rama Alag and Rama Alag filed the petition. Neither Sharda Kapoor nor Rama Alag entered the witness box. Had they appeared as witness, they would have been cross examined that how and under what circumstances this will was handed over to them by Ram Kapoor, where was Ram Kapoor residing and why he did not**



disclose the will to the daughters for a period of one year. The husband of deceased sister Usha Rani appeared as a witness. There is no corroboration of his statement that the will was handed over to Ram Kapoor and he handed over the will to Sharda Kapoor after one year of the death of the testator. **If the testator had a change of mind and wanted to bequeath something in favour of his daughters, he would have handed over the will to any of his daughter or sons-in-law or atleast to a person who would immediately disclose the existence of a will to his daughters. Similarly if he was convinced that his son Ashok Malhotra was responsible for the death of his elder son, he would not have given any share to that son and if he wanted to change his will because his daughter-in-law was not serving him properly, he would not have given any share to her. But there is no such mention in the will.** The testator was an educated person. His son in law was working as accounts officer in the office of Sub-Registrar. Second son-in-law was working as Deputy Registrar in Supreme Court of India. He got the first will duly registered but the second will is not a registered document. If he was revoking his first will he would have got the second will registered so as to effectively revoke the first will. Non registration of the second will and not propounding the second will at the earliest possible opportunity by the daughters points to only one thing that both the brothers being unemployed and drug addicts, after the death of one brother and judicial custody of second brother the daughters wanted the property to be preserved and not to be disposed of by Savita Malhotra. **With this intention they filed a civil suit against her and when she propounded the will they forged this will in connivance with the attesting witnesses and to fill up the lacuna that why the will was not propounded at the time of filing the first civil suit they came up with a story that the will was handed over to Ram Kapoor and he handed over the will to them after one year. Ram Kapoor has also not been examined in the court though he is also shown as one of the signatory of the will. Under the normal circumstances, he being a close relative must have attended the funeral and Kriya ceremony of the testator. He was aware of the circumstances under which elder son died and the second son was in judicial custody. That was the only occasion for him to disclose it to the daughters of the testator that testator had executed a will in their favour and handed over the same to him. The duty of the court is to implement the last will of the testator.**



Hence in view of above discussion, I hold that the will dated 31.1.1989 is the legally executed last will of the testator. The will dated 16.6.1992 is a forged and fabricated document.

RELIEF

IN PC. NO. 180/06 TITLED RAMA ALAG VS STATE

In view of above discussion, petition bearing number 180/06 titled Rama Alag vs State is hereby dismissed. File be consigned to record room.

IN PC. NO. 181/06 TITLED SAVITA MALHOTRA VS STATE

In view of above discussion, petition bearing number 181/06 titled Savita Malhotra Vs State is hereby allowed. Hence letter of administration is issued in favour of the petitioner with regard to the will dated 3.11.1989 with will annexed on filing of valuation report, court fees and on execution of administration and surety bond. File be consigned to record room.” {bold portions emphasized}

16. Before examining the validity of the aforesaid reasoning accorded by the learned Probate Court, it would be expedient to reproduce Section 63 of the Indian Succession Act, 1925, which prescribes the manner in which a Will has to be executed, which reads as under:

“63. Execution of unprivileged Wills.—

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than



one witness be present at the same time, and no particular form of attestation shall be necessary.”

17. It is well settled in law that the attestation of the Will in the manner laid down in Section 63 of the Indian Succession Act is not an empty formality. It is also well settled that the aforesaid provision has to be read in conjunction with Section 68 of the IEA which prescribes the manner in which the execution of the document is required to be proven, which goes as under:-

“68. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.] [Inserted by Act 31 of 1926, Section 2.]”

18. Avoiding a long academic discussion on the subject, it would be apposite to refer to the observations of the Supreme Court in the case of **Surendra Pal v. Saraswati Arora (Dr.)**¹¹ which read as under:-

“7. The propounder has to show that the Will was signed by the testator; that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the

¹¹ (1974) 2 SCC 600



onus which rests on the propounder is discharged. **But there may be cases in which the execution of the Will itself is surrounded by suspicious circumstances**, such as, where the signature is doubtful, the testator is of feeble mind or **is overawed by powerful minds interested in getting his property**, or where in the light of the relevant circumstances the dispositions appear to be unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the Will are not the result of the testator's free will and mind. In all such cases where there may be legitimate suspicious circumstances **those must be reviewed and satisfactorily explained before the Will is accepted**. Again in cases where the propounder has himself taken a prominent part in the execution of the Will which confers on him substantial benefit that is itself one of the suspicious circumstances which he must remove by clear and satisfactory evidence. After all, ultimately it is the conscience of the court that has to be satisfied, as such the nature and quality of proof must be commensurate with the need to satisfy that conscience and remove any suspicion which a reasonable man may, in the relevant circumstances of the case, entertain. (See *H. Venkatachala lyengar v. B.N. Thimmajamma* [AIR 1959 SC 443 : 1959 Supp (1) SCR 426 : 1959 SCJ 507] and *Rani Purnima Devi v. Kumar Khagendra Narayan Dev* [AIR 1962 SC 567 : (1962) 3 SCR 195 : (1962) 1 SCJ 725]) In the latter case this Court, after referring to the principles stated in the former case emphasised that where there are suspicious circumstances the onus will be on the propounder to explain them to the satisfaction of the court before the Will could be accepted as genuine; and where the caveator alleges undue influence, fraud and coercion the onus is on him to prove the same. It has been further pointed out that the suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will which may be unnatural or unfair or improbable when considered in the light of the relevant circumstances. If the caveator does not discharge the burden which rests upon him in establishing the circumstances which show that the Will had been obtained by fraud or undue influence, a probate of the Will must necessarily be granted if it is established that the testator had full testamentary capacity and had in fact executed it validly with a free will and mind. The observations of the Privy Council in *Motibai Hormusjee Kanga v. Jamsetjee Hormusjee Kanga* [AIR 1924 PC 28 : 80 IC 777 : 26 BLR 579] support the above proposition. Mr Ammer Ali observed at p. 33:

“It is quite clear that the onus of establishing capacity lay on the petitioner. It is also clear that if the caveator impugned the Will on



the ground that it was obtained by the exercise of undue influence, excessive persuasion or moral coercion, it lay upon him to establish that case.”

In the light of what has been stated if the various requirements of a valid Will are established, then as observed by the Privy Council in *Motibai Hormusjee Kanga's case* at p. 33:

“A man may act foolishly and even heartlessly; if he acts with full comprehension of what he is doing the Court will not interfere with the exercise of his volition.” **{Bold portions emphasized}**

19. In view of the aforesaid proposition of law, reverting to the instant case, while there is some merit in the plea canvassed by the learned counsel for the appellants that the first Will dated 30.01.1989 Ex.PW-3/1 has not been proven in accordance with Section 68 of the IEA, inasmuch as although one of the attesting witnesses, namely, Jagdish Chander Mehra has since died, no efforts were made to summon and examine the second attesting witness on the said Will. However, the said issue loses its legal significance when it is appreciated that the execution of the first Will dated 30.01.1989 Ex.PW-3/1 is clearly admitted in the second Will propounded by the appellants dated 16.06.1992 Ex.PW-1/1. Therefore, the plea raised by learned counsel for the respondents that the onus of proving that the first Will was validly revoked was upon the appellants.

20. It states on the face of record that the appellants did not enter into the witness box. They elected to be represented through a Special Power of Attorney namely PW-2 Darshan Singh, who incidentally was the husband of the deceased sister /appellant No. 3 Smt. Usha Rani. A careful perusal of the testimony of PW-2 Dharshan Singh would show



that he had no personal knowledge of the execution of the second Will dated 16.06.1992 Ex.PW-1/1. Further, PW-2 had no knowledge of the circumstances under which his father-in-law, deceased Jagdish Chander Mehra, executed the first Will or for that matter, the second Will. The appreciation of the pleadings *vis-à-vis* the testimony of the witnesses examined on behalf of the appellants would go on to show that their version that the execution of the second Will dated 16.06.1992 was told to them by Sh. Ram Kapoor, after a year of the death of their father, is not fathomable.

21. To my mind, the learned Trial Court has correctly deciphered the suspicious circumstances to the effect that if the execution of the Will by the deceased testator was disclosed by Mr. Ram Kapoor after a year of the death of the testator to both sisters viz. Rama Alagh and Sharda Kapoor, then how come the appellant-Rama Alagh instituted a suit for injunction on 04.05.1993 claiming that her father had died intestate and *inter-alia* claiming 1/5th share in the subject property. In fact, a bare perusal of the narrative of the plaint filed by appellant No.1 Rama Alagh would show that she had neither disclosed the execution of the first Will nor the second Will and her claim was based on the assertion that her father died intestate pursuant to which she along with other legal heirs of the deceased testator inherited equal right, title and interest in the subject premises to the extent of 1/5th each.

22. At the cost of repetition, the learned Probate Court has rightly observed that both the appellants, namely Rama Alagh and Sharda



Kapoor were the best witnesses to depose about the circumstances under which their father changed, if at all, his mind so as to revoke the first Will dated 31.01.1989 and instead intended to bequeath equal shares amongst his children. The version of the appellants fails to get substantiated in light of the fact that though PW-1 I.S. Rekhi deposed that the second Will Ex.PW-3/1 was signed by the deceased testator in his presence as well as in the presence of Dr. Sekhia, Ram Kapoor and one lady Sharda Devi and the deceased testator handed over the Will to Ram Kapoor, who was the nephew of the deceased testator, and allegedly present at the time of the execution of the Will also, was not examined either. There is no corroboration to the testimony of PW-1 I.S. Rekhi as to when and under what circumstances he handed over the Will to Ram Kapoor. There is no evidence as to when Ram Kapoor acquired the Will from PW-1 I.S. Rekhi and why he chose to remain silent for more than a year, before disclosing the execution of such Will i.e. second Will to her aunts i.e. appellant No.1/Rama Alagh and appellant No.2/Sharda Kapoor.

23. It is in the said circumstances that the learned Probate Court made the observation that if the testator had changed his mind and wanted to bequeath something in favour of his own daughters, he could have very conveniently handed over the original Will or copies thereof to his daughters and there was no need for him to create such kind of confidentiality. Assuming for the sake of convenience that the testator wanted to avoid any bad blood or worsening of his situation *vis-à-vis*



the daughter-in-law i.e., Savita Malhotra, besides the other son Ashok Malhotra, the execution of the second Will dated 16.06.1992 could have been very conveniently disclosed soon after the death of the testator i.e. after 20.01.1993.

24. Further, there is no blemish in the observations by the learned Probate Court that in view of the fact that the suit initially filed by the appellant No.1/Rama Alagh claiming that her father had died intestate was withdrawn after the first Will dated 31.01.1989 was propounded by respondent Savita Malhotra immediately on receiving summons in the suit on 15.07.1993, the possibility cannot be ruled out that the second Will dated 16.06.1992 was then fabricated, in order to put a cloud over the first Will and thereby seek equal rights, title and interest in the property in question.

25. Before parting with this matter, insofar as the overwhelming case law which has been placed on the record by the learned counsel for the appellants, including the decision in *Pratap Singh v. State (supra)*, there is no denying the proposition of law that the mere fact that a Will is registered is no legal assurance or conclusiveness as to its genuineness.

26. The case of *Janki Narayan Bhoir v. Narayan Namdeo Kadam (supra)* affirms the proposition of law that in terms of Section 68 of the IEA, mere proof of signatures of the testator is not a valid proof so as to accord legality to the Will. However, in the present matter, what starkly comes out is that there was a clear admission by the appellants



that their father had executed a Will dated 31.01.1989 earlier in favour of the family of the deceased brother, as well as the surviving brother.

27. It is in such a situation that Section 17¹² of the IEA comes into play to the extent that there was an admission of fact in the second Will, raising inference to a relevant fact that an earlier Will had been executed by the testator.

28. Although, by virtue of Section 31¹³ of the IEA, an admission may not be conclusive proof of the matters admitted, but admission if made may operate as estoppel. The estoppel here is that once the appellants have admitted that the first Will dated 31.01.1989 Ex.PW-3/1 was executed by their father but it was revoked, the burden of proving the same was upon their shoulders, which the appellants have woefully failed to discharge.

29. Much mileage was sought to be taken by the learned counsel for the appellants from the issue that the second probate application was filed by respondent Smt. Savita Malhotra, since deceased, much beyond a period of three years from the date of death of the deceased testator or for that matter when appellant No.2/defendant No.4 in the suit propounded Will dated 16.06.1992 in her written statement filed on

¹² **17. Admission defined.** --An admission is a statement, 1[oral or documentary or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

¹³ **31. Admissions not conclusive proof, but may estop.** --Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.



15.12.1993.

30. The case of ***Kunvarjeet Singh Khandpur v. Kirandeep Kaur (supra)*** was also cited at the Bar, wherein it was held that an application for grant of probate or letters of administration is also covered under Article 137 of the Limitation Act, 1963. It was in the said context that it was sought to be urged that the second petition filed by Smt. Savita Malhotra on 14.01.1997 was beyond three years from the time the right to sue accrued. It needs to be appreciated that the decision in the case of ***Kunvarjeet Singh Khandpur v. Kirandeep Kaur (supra)*** was given in the background where a petition for letters of administration was filed but sought to be withdrawn by the applicants whereas the other beneficiaries then sought substitution to pursue the petition in their own rights.

31. To that effect, in the case of ***Pamela Manmohan Singh v. State (supra)***, it was also held that a petition for probate or letters of administration ought to be filed within three years of the conjured opposition to the Will. However, what cannot be overlooked is that the filing of a petition for probate of a Will in Delhi is not a mandatory requirement of law. Secondly, even if assuming that the second petition filed on 14.01.1997 by Smt. Savita Malhotra and her children bearing No. 181/2006 was beyond the period of limitation from the death of the deceased which occurred on 20.01.1993, there is merit in the plea of learned counsel for the respondents that there was no adjudication by the Court in the suit filed by the appellant No.1 as regards the



genuineness and validity of the first Will dated 30.01.1989 and since the said Will was not challenged or set-aside by any Court of law, the respondents i.e. Savita Malhorta and her children, were entitled in law to assume that they have been residing in the said premises in their own rights for the right, title, interest having been bequeathed in their favour by the deceased testator by virtue of the first Will dated 31.01.1989.

32. All said and done, since the first petition for probate filed by the appellants on 25.04.1994 *inter-alia* also envisaged the cancellation or revocation of the first Will dated 31.01.1989, the remedy to the respondent Smt. Savita Malhotra and her children got revived, so as to seek legal declaration of their right, title and interest by virtue of the first Will dated 31.01.1989.

33. It is well settled in the law of limitation that although a remedy may be barred, but the rights emanating from the testamentary disposition do not get extinguished. Reference can be the decision in the case of **Prem Singh v. Birbal**¹⁴ wherein it was held as under:-

“Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

An extinction of right, as contemplated by the provisions of the Limitation Act, *prima facie* would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the Articles, provides that upon lapse of the prescribed period,

¹⁴ AIR 2006 Supreme Court 3608



the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed. Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are voidable transactions.”

34. In view of the foregoing discussion, this Court, without any hesitation, finds that the impugned judgment dated 24.05.2007 passed by the learned Probate Court does not suffer from any patent illegality, perversity, or incorrect approach in law. The present appeal is bereft of any merits, and therefore, the same is hereby dismissed.

35. The pending applications also stand disposed of accordingly.

DHARMESH SHARMA, J.

MARCH 25, 2025

Sadiq/sp