



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

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+ **FAO 453/2010**

KRISHNA MALHOTRAAppellant

Through: Ms. Shruti Munjal, Ms. Trisha Dhara
and Mr. Gurmehar Singh, Advocates

versus

KISHAN DHINGRA & ANRRespondents

Through: Ms. Seema Singh, Advocate for
respondent No.1

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal filed under Section 299 of the Indian Succession Act, 1925 (hereinafter referred to as the "Act") challenges the order dated 21.08.2010 passed by the learned ADJ in Probate Case No. 462/06. *Vide* the impugned order, the Trial Court allowed the underlying probate petition filed under Section 276 of the Act and granted probate *qua* the Will dated 22.06.1997 executed by Late Sh. *Nand Lal Dhingra*.
2. The said petition was filed by the testator's son, namely Sh. *Kishan Dhingra* and the same was opposed by the testator's daughter, namely Dr. (Smt.) *Krishna Malhotra*.
3. The present appeal has been preferred by the appellant challenging the



judgment whereby the Trial Court held the Will dated 22.06.1997 to be the duly executed last Will and testament of late Sh. *Nand Lal Dhingra*.

4. Briefly stated, the facts relevant for the adjudication of the present appeal are as follows:

Late Sh. *Nand Lal Dhingra* (hereinafter referred to as the “testator”) expired on 12.12.2000 leaving behind the respondent No.1/son and the appellant/daughter as his only Class-I legal heirs. The respondent propounded a Will dated 22.06.1997, allegedly executed by the testator in respect of property bearing no. 4-D/10, Old *Rajinder Nagar*, New *Delhi*, whereunder the said property was bequeathed exclusively in his favour.

5. Learned counsel appearing for the appellant, while assailing the impugned judgment, contends that the Trial Court failed to appreciate the various suspicious circumstances surrounding the Will in question. It is contended that the Will itself does not correctly mention the complete name of the testator and further bears signatures in the name of “*Nand Lal*”, whereas the testator admittedly used to sign as “*Nand Lal Dhingra*” or “*N.L. Dhingra*”. Learned counsel submits that the said circumstance goes to the root of the matter and supports the plea of forgery raised by the appellant. It is further contended that the Will was stated to be executed in the presence of two attesting witnesses, however, the document itself bears signatures of three witnesses, namely Sh. *S.K. Tandon*, Dr. Mrs. *K. Bhargava* and Sh. *J.C. Khera*. Learned counsel submits that the presence of signatures of a third witness is itself suspicious, particularly when the testimony of PW-1/Sh. *S.K. Tandon* suggests that the third witness had not signed in his presence. It is furthermore submitted that the Will was executed merely a few days after the demise of the testator’s wife, at a stage when the testator was around 86



years of age and it is contended that the testator had suffered repeated falls, sustained head injuries and developed haematoma, for which he had remained admitted in *Khera* Hospital on several occasions. In such circumstances, it is argued that the testator could not be stated to be in a sound disposing state of mind capable of understanding the nature and consequences of the testamentary disposition.

6. *Per contra*, learned counsel appearing for the respondent, while supporting the impugned judgment, submits that the Will stood duly proved through the testimony of the attesting witness/Sh. *S.K. Tandon* (PW-1), who unequivocally deposed regarding the execution and attestation thereof in accordance with law. It is submitted that the mere non-examination of the remaining attesting witness is not fatal once one attesting witness has been examined and has satisfactorily proved the execution of the Will. Learned counsel further submits that no cogent medical evidence has been brought on record by the appellant to establish that the testator lacked testamentary capacity on the date of execution of the Will. Learned counsel submits that the Will itself records the reasons for bequeathing the property in favour of the respondent, namely that the testator was being looked after by him during his old age and that sufficient amounts had already been spent on the marriage of the appellant. It is lastly submitted that the findings returned by the learned Trial Court are based upon proper appreciation of the oral and documentary evidence on record and do not warrant any interference in appellate jurisdiction.

7. I have heard the learned counsels for the parties and carefully examined the record.

8. The law relating to execution and proof of Wills is fairly well settled.



Section 63(c) of the Act mandates that a Will must be attested by two or more witnesses, each of whom has either seen the testator sign the document or has received from the testator an acknowledgment of his signature. Section 68 of the Indian Evidence Act, 1872 further stipulates that at least one attesting witness must be examined for proving execution of a Will.

9. The propounder is required to establish that the Will was signed by the testator while being in a sound disposing state of mind and that the same was executed of his own free volition. The principles governing suspicious circumstances have been expounded by the Supreme Court in Surendra Pal v. Dr. (Mrs.) Saraswati Arora¹, wherein it was held that the propounder should demonstrate that the Will was signed by the testator and at the relevant time, the testator was in a sound and disposing state of mind and had understood the nature and effect of the dispositions, that he had put his signature on the testimony of his own free will and at least two witnesses have attested the Will in his presence. In such situations, the burden upon the propounder becomes heavier and the suspicious circumstances are required to be satisfactorily explained before the Will can be accepted as genuine.

At the same time, the Supreme Court also clarified that mere exclusion of a natural heir does not by itself render a Will invalid, since a testator is fully entitled to distribute his estate in the manner he deems appropriate. The role of the Probate Court is confined to examining whether the Will was validly executed by a competent testator and not whether the distribution made therein was fair or equitable.

10. In the present case, a careful reading of the testimony of PW-1/ Sh.

¹ (1974) 2 SCC 600



S.K. *Tandon* shows that the witness categorically deposed that the testator had approached him expressing his desire to execute a Will and thereafter, visited his residence on 22.06.1997. PW-1 specifically stated that the testator executed and signed the Will in his presence and in the presence of Dr. (Mrs.) *K. Bhargava* and that he, in turn, appended his signatures in their presence. The witness also identified the signatures of the testator as well as those of Dr. (Mrs.) *K. Bhargava* appearing upon the Will. PW-1 further deposed that the Will had already been prepared by the testator and was brought by him at the time of execution and attestation. Significantly, no suggestion was put to PW-1 in his cross-examination that the signatures appearing on the Will were suspicious merely because the testator had signed as “*Nand Lal*” instead of “*Nand Lal*”.

11. The appellant has sought to assail the credibility of PW-1 by contending that he was not an independent witness. This Court finds no merit in the said submission. Merely because a witness is acquainted with the family or knows the beneficiary does not render him an “interested” witness in law. It is natural for an elderly testator to call upon persons known and trusted by him for witnessing the execution of his testamentary document. Nothing has been brought on record to demonstrate that PW-1 stood to derive any direct or indirect benefit from the Will. On the contrary, PW-1 was a retired judicial officer and no material contradiction affecting the core of his testimony has been elicited during cross-examination.

12. The contention regarding the existence of signatures of a third witness/Sh. *J.C. Khara* upon the Will also does not persuade this Court to hold the document suspicious. Learned counsel for the appellant argued that since the Will records execution in the presence of two witnesses, the



presence of a third signatory renders the entire document doubtful. Section 63(c) of the Act merely prescribes the minimum statutory requirement of attestation by two witnesses. The provision nowhere stipulates that a Will cannot bear signatures of additional persons. As noticed by the Supreme Court in Raj Kumari and Others v. Surinder Pal Sharma², no particular form of attestation is necessary so long as the mandatory ingredients of due execution and attestation stand fulfilled. It is also pertinent to note that Sh. J.C. Khera was never examined during the course of trial and no specific objection regarding his alleged role appears to have been seriously pursued before the Trial Court. In such circumstances, the appellant cannot seek to invalidate the entire testamentary document merely on the basis of arguments concerning the third signatory.

13. The appellant has heavily relied upon the statement of PW-1 that Sh. J.C. Khera had not signed in his presence. In the opinion of this Court, the aforesaid circumstance, at best, pertains to the role of the third signatory and not to the due execution and attestation of the Will by the testator and the two attesting witnesses whose signatures stand proved on record. The evidence of PW-1 clearly establishes that the testator signed the Will in the presence of PW-1 and Dr. (Mrs.) K. Bhargava and that they attested the same in the manner contemplated under Section 63(c) of the Act. Once the essential statutory ingredients stand fulfilled, the existence or participation of an additional signatory does not invalidate the testamentary instrument.

14. The appellant has next questioned the signatures appearing on the Will by contending that the testator used to sign as “Nand Lal Dhingra” or “N.L. Dhingra” and not as “Nand Lall”. In this regard, A careful perusal of

² (2021) 14 SCC 500



the testimony of RW-1/Sh. *Deepak Jain*, the handwriting expert examined by the appellant, shows that the opinion regarding the disputed signatures was rendered on the basis of comparison with certain documents alleged to contain admitted signatures of the testator. However, the Trial Court, upon appreciation of the evidence on record, did not find the said opinion sufficiently reliable to dislodge the direct testimony of the attesting witness regarding execution of the Will. The very basis of the comparison exercise therefore remained uncertain. It is trite law that opinion of a private handwriting expert is merely advisory in nature and cannot override reliable direct evidence regarding execution of a Will. The direct testimony of PW-1 identifying the signatures of the testator assumes greater significance than the inconclusive opinion of the handwriting expert. Significantly, even RW-1 admitted in his cross-examination that “looking with the naked eye the writing is identical on the disputed signatures and those of the admitted signatures” and further admitted that in all the admitted as well as disputed signatures, the writer used to write his name as “*Nand Lall*”. Furthermore, the record itself contains documents bearing signatures of the testator as “*Nand Lall*”, including the letter dated 21.09.1998 as well as the communication dated 29.10.1998 addressed to CDA Pension, *Allahabad*. Minor variations in signatures are also not uncommon, particularly where the executant is of advanced age and suffering from physical weakness.

15. The appellant has further contended that the Will is surrounded by suspicious circumstances as the same was allegedly executed merely about twenty-two days after the demise of the testator’s wife. It has been argued that the testator was incapable of taking conscious decisions at the relevant time. Learned counsel for the appellant has also placed reliance upon the



decision of the Supreme Court in Kavita Kanwar v. Pamela Mehta³ to contend that where suspicious circumstances surround the execution of a Will, the propounder carries a heavier burden to dispel the same by cogent and satisfactory evidence. There can be no quarrel with the aforesaid proposition.

16. However, the facts of the present case stand on an entirely different footing. The due execution and attestation of the Will stand affirmatively proved through the testimony of PW-1, which has remained substantially unimpeached on material particulars. The suspicious circumstances sought to be projected by the appellant are either adequately explained or do not go to the root of the execution of the testamentary document.

17. The medical evidence relied upon by the appellant also fails to substantiate the plea of incapacity. Considerable emphasis has been placed upon alleged falls suffered by the testator, development of haematoma and his admission in *Khera* Hospital. In order to prove the medical record, Sh. *Prabhat Kumar* (RW-2A), MRD Supervisor from R.L.K.C. Hospital and Metro Heart Institute, was examined and a careful perusal of his testimony reveals that the witness did not produce any original medical record and had merely produced photocopies available in the hospital record. The witness specifically stated that he had no personal knowledge regarding preparation of the documents in question and was unable to identify either the handwriting or signatures of the concerned doctors. In such circumstances, mere production of photocopies of medical papers through a witness having no personal knowledge regarding their preparation could not have conclusively established that the testator lacked testamentary capacity on

³ (2021) 11 SCC



22.06.1997. Significantly, the documents relied upon by the appellant include discharge slips and LAMA forms pertaining to September 1997 i.e., three months after execution of the Will. Further, there is no evidence on record to show that on 22.06.1997, the testator was incapable of comprehending the nature and effect of the dispositions made by him. Rather, it has come in the testimony of Dr. *Krishan Khera* (RW-2) that the testator had discussions regarding execution of a Will and he was in a mentally sound condition in September 1997 i.e., within three months of execution of the Will.

18. It is equally well settled that old age, illness or physical weakness by themselves do not render a person incompetent to execute a Will. Reference in this regard is placed on the decision in *Pentakota Satyanarayana v. Pentakota Seetharatnam*⁴, wherein the Supreme Court observed that the initial onus upon the propounder stands discharged upon adducing satisfactory evidence that the Will was signed by the testator in a sound disposing state of mind and out of his own free volition.

In the present case as well, apart from broad allegations regarding advanced age and medical condition, no cogent evidence has been led to establish coercion, fraud or undue influence exercised by the respondent upon the testator.

19. The appellant has also argued that the bequest itself is unnatural as the daughter has been excluded from the immovable property despite cordial relations with the testator. The Court exercising probate jurisdiction is not concerned with the fairness of the disposition but only with its genuineness especially when the Will itself records the reasons which weighed with the

⁴ (2005) 8 SCC 67



testator, namely that the respondent was taking care of him during his old age and that sufficient expenditure had already been incurred at the time of the appellant's marriage.

20. The appellant has additionally relied upon the joint communication dated 10.02.2001 addressed by the parties to Canara Bank to contend that the respondent himself did not initially assert the existence of the Will. It is true that during his cross-examination, the respondent initially denied that he and the appellant had jointly addressed a communication to Canara Bank seeking to occupy the second floor. However, upon referring to the letter dated 10.02.2001, he admitted the same and acknowledged that both parties had requested the Bank to vacate the premises.

Nevertheless, the said communication merely pertained to the tenancy and possession of a portion of the property and reflected the parties describing themselves as legal heirs of the deceased for limited administrative purposes. The same cannot be construed as abandonment, waiver or non-existence of the testamentary document. At best, the said circumstance may show that the parties were jointly dealing with the tenant after the demise of the testator, but the same does not by itself dislodge the otherwise cogent evidence regarding the due execution and attestation of the Will.

21. Upon appreciation of the evidence on record, this Court is satisfied that the respondent successfully proved the due execution and attestation of the Will dated 22.06.1997 and the findings returned by the Trial Court are based upon proper appreciation of evidence and do not suffer from perversity or material irregularity warranting interference in appellate jurisdiction.

22. Considering all the above, I find no infirmity or illegality in the



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impugned order and the present appeal is accordingly dismissed.

(MANOJ KUMAR OHRI)
JUDGE

MAY 29, 2026

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