



2026:DHC:7995



\$~15

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

%

Date of Decision: 14.09.2026# **CNR No. DLHC011148382014**+ **TEST.CAS. 74/2014 and IA No. 15204/2026****RAVI SHANKER LUTHER & ORS**

.....Petitioners

Through: Mr. Pawanjit Singh Bindra (Sr. Adv)
along with Mr. Abhishek Aggarwal,
Mr. Abhishek Rathi, Advs.

versus

THE STATE & ORS

.....Respondents

Through: Mr. Rajesh Goswami, Ms. Rashi
Goswami, Advs. for R2
Mr. Abhishek Aggarwal, Adv. for R3
Mr. Rohit Shukla, Adv. for R4**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)****I.A. 24252/2025 (ON B/O R-2 FOR DELETING ONE OF THE ISSUES
FRAMED DURING TRIAL VIDE ORDER DT. 20-09-2017)**

1. By way of this application, the respondent no.2 seeks that the Issue No.1 framed by this Court *vide* order dated 20.09.2017 be deleted. The issues framed by this Court *vide order* 20.09.2017 are as follows:-

1. Whether the deceased had no authority to execute the Will dated 18.06.2004 in respect of the suit property as alleged? OPR-2
2. Whether this petition has not been instituted by an authorised person? OPR-2
3. Whether the Will/document dated 18.06.2004 propounded by the petitioner is the last Will and testament of deceased Chiranji Lal? OPP
4. Whether the last Will / Testament dated 18.06.2004 of late Chiranji Lal is legal and valid? OPP
5. Relief, if any.



2026:DHC:7995



2. It is pointed out that the respondent no.2 had filed I.A. No. 2167/2020 under Order 16 Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 seeking to summon witnesses from the Office of the L&DO and also from the Office of the Settlement Commissioner of Evacuee Properties in order to establish that the consideration for acquisition of the suit property had come from compensation received on account of migration at the time of partition and that the property was, therefore, joint family property of which the testator was no more than the Karta.

3. The said application was dismissed by this Court *vide* order dated 02.02.2023. This Court held following ***Kanwarjit Singh Dhillon Vs. Hardyal Singh Dhillon & Ors (2007) 11 SCC 357*** that the jurisdiction of a Probate Court is confined to satisfying itself if the Will is executed by the testator in a sound disposing state of mind without coercion or undue influence and that it was duly attested.

4. The question whether the testator had title to the subject property cannot be determined in probate proceedings. The relevant passage from the judgment ***Kanwarjit Singh Dhillon Vs. Hardyal Singh Dhillon & Ors (2007) 11 SCC 357*** extracted in the order dated 02.02.2023 is as follows:-

“11. As noted hereinafter, the suit for declaration of title and injunction has been filed by the appellant inter alia on the allegations that the suit properties are joint family properties of HUF of which the appellant and his two brothers Hardyal Singh Dhillon and Harbans Singh Dhillon, mother Surjit Kaur and unmarried daughter Amarjit Kaur are members. It has also been claimed by the appellant in the suit that by utilising the income from the ancestral agricultural land, various properties including the suit properties were acquired. Such being the allegations made in the plaint which can only be decided on trial after parties are permitted to adduce evidence in respect of their respective claims, it is difficult to hold that only because probate of the will of late S. Kirpal Singh has been granted, the suit for title and injunction must be held to be not maintainable in law. It is well-settled law that the functions of a Probate Court are to see that the will



executed by the testator was actually executed by him in a sound disposing state of mind without coercion or undue influence and the same was duly attested. It was, therefore, not competent for the Probate Court to determine whether late S. Kirpal Singh had or had not the authority to dispose of the suit properties which he purported to have bequeathed by his will. The Probate Court is also not competent to determine the question of title to the suit properties nor will it go into the question whether the suit properties bequeathed by the will were joint ancestral properties or acquired properties of the testator." (Emphasis supplied)

5. It is pointed out that the appeal filed by the respondent no.2 against the aforesaid order being FAO (OS) 105/2023 was dismissed by the Division Bench of this Court on 30.01.2024. SLP (diary no. 16038/2024) filed thereafter also came to be dismissed by the Supreme Court.
6. In the above context, the respondent no.2 submits that Issue No.1 has ceased to have any relevance and it is not tenable for the respondent no.2 to either adduce evidence with regard to the said issue or to seek to prove the same. It is, therefore, submitted that the said issue be deleted.
7. It is noticed that Order 14 Rule 5(2) of the Code of Civil Procedure provides that the Court may at any time before passing a decree strike out any issues that appear to it to be wrongly framed or introduced.
8. As already noted by this Court *vide* order dated 02.02.2023, the question as to whether the testator had authority to execute the Will in respect of the suit property is an aspect which cannot be gone into in these proceedings. In case, Issue No.1 is not deleted, this Court would either have to record a final question outside its jurisdiction or leave an issue answered. Clearly this cannot be countenanced.
9. In the circumstances, the issue no.1 is struck off inasmuch as it falls outside the jurisdiction of this Court in these proceedings.
10. The application is allowed in above terms.



2026:DHC:7995



11. It is informed by respective counsel for the parties that evidence already stands recorded.
12. List for final hearing on 07.12.2026.
13. The parties are directed to file their short synopsis of submissions, not exceeding three pages, within a period of four weeks from today.

SACHIN DATTA, J

SEPTEMBER 14, 2026/uk