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

Reserved on: 16th April, 2025

Date of Decision: 27th August, 2025

+ TEST.CAS. 69/2024 & I.As. 37687-88/2024, 42337-39/2024

SURBHI SHARMA

.....Petitioner

Through: Mr. Visheshwar Shrivastav and Mr.
Manoj Kumar Gautam, Advocates

versus

STATE OF NCT OF DELHI AND ORS

.....Respondents

Through: Ms. Avni Singh, Advocate for
GNCTD

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. This testamentary petition is filed along with the applications which have been taken up altogether.
2. The Petitioner has filed the present petition under Section 237 and 276 of the Indian Succession Act, 1925 ('Act of 1925') for grant of Probate on a *photocopy* of an unregistered Will dated 01.11.2023 purported to have been executed by late Ms. Sangam Sharma ('Testatrix'), aged about 30 years, residing at 121, Ground Floor, Shubham Apartment, Sector-12, Pocket-4, Dwarka, New Delhi-110077, at which address she was residing at the time of her death on 12.01.2024.



3. By this judgment, this Court shall now proceed to decide the present petition.

Submissions on behalf of the Petitioner

4. It is the case of the Petitioner that late Smt. Saroj Sharma, the mother of the Petitioner, Respondent No. 3, and the Testatrix, was the owner/lessee of the following properties:

A. Property 24-25 A, Sewak Park Extension, Rama Park, Uttam Nagar, New Delhi-110059, admeasuring a total area of 225 Sq. Yards having a built-up house consisting of Ground Floor and First Floor.

B. Property 30 A, Sewak Park Extension, Rama Park, Uttam Nagar, New Delhi-110059, admeasuring an area of 80 Sq. Meters consisting of 1st Floor, 4th Floor & Baccha Floor Flat.

C. Property F-58, situated at RIICO Industrial Area, Bhiwadi, District Alwar, Rajasthan.

D. Property Flat bearing No. 121, Ground Floor, Shubham Apartment, Sector-12, Pocket-4, Dwarka, New Delhi-110077, admeasuring area 91 Sq. Meters.

5. These properties were bequeathed equally amongst all three daughters of late Smt. Saroj Sharma i.e., Surbhi Sharma/Petitioner, Smt. Sulekha Sharma/Respondent No. 3 and late Ms. Sangam Sharma/Testatrix by a Will dated 27.07.2005.

6. The Petitioner stated in the petition that, the property listed above at serial no. 'A' ('Property No. 24-25-A'), was mutually partitioned among the three sisters in June 2022 by executing relinquishment deeds. The three sisters agreed with Mr. Manoj Sharma (attesting witness no. 1) for the demolition of the existing super-structure and construction of a new building on the said property comprising of eight (8) flats. A General Power of Attorney ('GPA') was executed in favour of the Petitioner by Respondent No. 3 and the Testatrix, for managing the property.



6.1 It is stated that acting upon the said GPA, the Petitioner transferred all the eight flats in favour of the nominees of Mr. Manoj Sharma (attesting witness no. 1) and Mr. Vishnu Sharma (attesting witness no. 2) in January 2024.

6.2 It is stated in the petition that the Petitioner was unaware of the existence of the Will dated 01.11.2023 and discovered a *photocopy* of the said Will on 02.05.2024, while cleaning her apartment specifically underneath her quilts in her personal almirah. It is stated that the Petitioner has never seen the original Will and was not informed by the Testatrix about the execution of the Will. It is further stated that, despite thorough searches conducted by the Petitioner throughout her apartment, the original copy of the Will could not be located.

6.3 It is stated that, to confirm the authenticity of the Will, the Petitioner contacted Mr. Manoj Sharma, whose name and signature appear on the Will along with Mr. Vishnu Sharma. Both Mr. Vishnu Sharma and Mr. Manoj Sharma *subsequently* met with the Petitioner and verified that the Testatrix had executed the Will on 01.11.2023. They further informed the Petitioner that the Testatrix had called them to her residence to act as witnesses to her Will, which she had prepared.

6.4 It is stated that the witnesses corroborated that the Testatrix duly executed the Will by signing it in their presence, following which both witnesses affixed their signatures on the alleged Will.

6.5 It is stated that she had continued her search for the original copy of the Will, reaching out to various friends and relatives; however, these efforts yielded no results.



6.6 It is stated that Respondent No. 3, at times, accompanied by her husband or father-in-law, frequently visited the Testatrix's residence, and the Petitioner firmly believes that either Respondent No. 3 or her husband or father-in-law may have discovered the original Will and unlawfully removed it, as the contents of the Will run contrary to the interests of Respondent No. 3.

6.7 It is stated that only Respondent No. 3 stands to gain from the non-production, disappearance, or loss of the Original Will, as evidenced by her claims in a civil suit filed by Respondent No. 3 bearing CS(OS) 155/2024.

7. The Petitioner submits that she is the sole beneficiary of the Testatrix's estates as per the unregistered *photocopied* Will dated 01.11.2023 and she verily believes that the original Will exists and is currently in the custody of Respondent No. 3.

Examination of Witnesses

8. It is pertinent to mention that Respondent No. 3 instituted a civil suit, bearing CS(OS) 155/2024 titled as 'Smt. Sulekha Sharma v. Ms. Surbhi Sharma', for partition of the estates of the Testatrix as well as for cancellation of the transfers pertaining to Property No. 24-25-A, Sewak Park Extension, Rama Park, Uttam Nagar, New Delhi-110059, on 31.01.2024 against the Petitioner herein, Mr. Manoj Sharma (attesting witness no. 1) and the nominees of Mr. Vishnu Sharma (attesting witness no. 2) disputing the authorization of the sale of the said flats.

It is at the stage of filing of the written statement in the said suit that Petitioner propounded the *photocopy* of an unregistered Will dated 01.11.2023 to claim absolute right in the said estates of the Testatrix and thus negate the claim of Respondent No. 3 based on intestate succession.



9. The propounded Will being a *photocopy*, its attesting witnesses being in litigation with Respondent No. 3 and the Will itself seeking to completely oust Respondent No. 3 were highly unusual and uncertain facts of this Petition, and therefore, this Court deemed it fit to first examine the attesting witnesses to the alleged Will as well as the Petitioner before setting the proceedings in motion.

10. Mr. Manoj Sharma, one of the witnesses to the alleged Will was examined on 09.10.2024. He stated that he has known the Testatrix for 22 years, and he witnessed her Will on 01.11.2023. He visited her home with another witness, Mr. Vishnu Sharma, and confirmed that she was in good health and made the Will due to family differences. After the Testatrix death, on 22.01.2024 while returning from Haridwar after completing the last rituals of the Testatrix, he informed about the execution of the Will to the Petitioner herein.

11. Mr. Vishnu Sharma, second witness to the Will, on his first examination on 09.10.2024 stated that he signed the Will on 01.11.2023 at the Testatrix residence, along with another witness, Mr. Manoj Sharma. He stated that he had not informed about the execution of the Will to any person. On his second examination on 14.10.2024, he stated that he had acquired five (5) out of eight (8) flats constructed on the Property No. 24-25-A in partnership with his cousins namely, Mr. Manoj Sharma (attesting witness no. 1) and Mr. Puneet Garg. He also explained the transactions pertaining to the development, construction and sale of eight (8) flats by the Petitioner in favour of the nominees of the attesting witnesses and stated that the disputes regarding Property No. 24-25-A are ongoing with Ms. Sulekha Sharma/Respondent No. 3 concerning the aforementioned sales.



12. The Petitioner in her statement during the examination on 14.10.2024, stated that she is unable to locate the original Will dated 01.11.2023 but found a *photocopy* of the same on 02.05.2024. She thereafter confirmed its authenticity with witnesses, Mr. Manoj Sharma and Mr. Vishnu Sharma. She stated that she sold Property No. 24-25-A for Rs. 1.73 crores, with the proceeds held in a joint account. In her statement, she confirmed that she had learnt about the existence of Will from Mr. Manoj Sharma, in the presence of Mr. Vishnu Sharma, on 22.01.2024 while returning from Haridwar (however, she had not disclosed this fact in her petition instead she stated that she discovered the existence of the Will on 02.05.2024). She stated that the flats at Property No. 24-25-A were sold by others at a higher price after renovations. She stated that all relevant sale documents qua Property No. 24-25-A are on record.

Findings and Analysis

13. This Court has heard the learned counsel for the Petitioner and perused the record. Also, the record of CS(OS) 155/2024 pending between the parties was summoned and perused.

14. The present petition has been filed under Section 237 and 276 of the Act of 1925 seeking probate on a *photocopy* of an unregistered Will dated 01.11.2023.

15. Section 237 of the Act of 1925 provides that a probate may only be granted for a copy of a lost or destroyed Will if it can be demonstrated that the original was not intentionally destroyed by the testator. Section 276 pertains to the process of applying for probate or letters of administration with the Will annexed regarding a deceased person's estate.

The immovable properties involved: Analysis and Description



16. The properties in which the Testatrix had title (whether as a part owner or absolute owner) as per the alleged *photocopied* Will in question are:

- **Property 24-25 A, Sewak Park Extension, Uttam Nagar, New Delhi:** Total area of 225 Sq. Yards with a built house consisting of Ground Floor and First Floor.
- **Property 30 A, Sewak Park Extension, Uttam Nagar, New Delhi:** Area of 80 Sq. Meters, comprising the First Floor, Fourth Floor, and Baccha Floor Flat.
- **Property F-58, RIICO Industrial Area, Bhiwadi, Rajasthan:** Area of 979 Sq. Meters, claimed under lease from RIICO.
- **Flat No. 121, Ground Floor, Shubham Apartment, Sector-12, Pocket-4, Dwarka, New Delhi:** Area of 91 Sq. Meters.

17. The immovable properties mentioned above, which are the subject of bequeath as per the alleged Will, is already a subject matter of a civil suit bearing CS(OS) 155/2024 filed by Respondent No. 3 seeking partition of the estate of the Testatrix as per intestate succession.

18. It is stated that a mutual partition of Property No. 24-25-A between Petitioner, Respondent No. 3 and the Testatrix occurred in June 2022, followed by a GPA executed by Respondent No. 3 and Testatrix in favour of the Petitioner authorizing her to manage Property No. 24-25-A. The Petitioner acting as an attorney, based on the said GPA, transferred eight (8) newly constructed flats on Property No. 24-25-A in favour of the nominees of Mr. Manoj Sharma (attesting witness no. 1) and Mr. Vishnu Sharma (attesting witness no. 2).

In CS(OS) 155/2024, there is a serious dispute between the Petitioner and the attesting witnesses on one hand with Respondent No. 3 on the other hand, with respect to the said sale, alleging it as illegal and fraudulent. The



challenge to the sale deeds is *qua* Respondent No. 3's 1/3rd share in the said property as well as *qua* the 1/3rd share of the Testatrix.

19. Following the filing of the aforesaid civil suit in January 2024, a *photocopy* of the alleged Will dated 01.11.2023, has inexplicably come to light. In this context, the present petition has been filed, propounding the *photocopy* of the Will, which the Petitioner claims to have discovered on 02.05.2024.

The Will in question

20. The alleged Will dated 01.11.2023, is claimed to be the last Will and testament of the Testatrix, bequeathing all her properties solely to the Petitioner herein, excluding her sister, Respondent No. 3. The Petitioner and Respondent No. 3 are the only natural legal heirs of the Testatrix.

21. The alleged Will is drawn up on one page and witnessed by Mr. Manoj Sharma (attesting witness no. 1) and Mr. Vishnu Sharma (attesting witness no. 2), confirming its execution. The Petitioner became aware of the existence of the alleged Will only upon discovering a *photocopy* while cleaning the cupboard on 02.05.2024. However, she has never seen the original Will and has been unable to locate it.

22. The pre-existence of the civil suit and the disputes therein, have a material bearing in evaluating the effect of the absence of an original of the alleged Will, which has mysteriously appeared on 02.05.2024; and the prayer seeking probate on the basis of the *photocopy* of the disputed Will.

Discrepancies in the statements given by the Petitioner and attesting witnesses with respect to the date of Petitioner's knowledge of the existence of the Will and the pendency of litigation between Petitioner, attesting witnesses and Respondent No. 3 in CS(OS) 155/2024



23. In the peculiar facts of this case, this Court at the notice stage deemed it appropriate to examine the attesting witnesses as well as the Petitioner to record their statements with respect to the existence and execution of Will. The said statements were recorded on 09.10.2024 and 14.10.2024.

24. In the petition, the Petitioner claims to have discovered a *photocopy* of the alleged Will on 02.05.2024, and that she was previously unaware of the existence of Will. The relevant portion of the petition at paragraph no. 2 reads as under:

“2. The Petitioner was **unaware of the existence of the Will** and **recently on 2nd May, 2024** started house cleaning including cleaning of the cupboards and **she was surprised to find a photocopy of the WILL** of Late Ms. Sangam Sharma underneath her quilts in her personal almirah.”

(Emphasis supplied)

25. However, Mr. Manoj Sharma (attesting witness no. 1) in his statement recorded on 09.10.2024 asserted that he informed the Petitioner on 22.01.2024 about the Will after the Testatrix’s death. The relevant portion of the statement reads as under:

“I state that **I informed Ms. Surbhi Sharma about the execution of the Will by Ms. Sangam Sharma on or about 22.01.2024** when we were returning from Haridwar after completing the last rituals of Ms. Sangam Sharma. I informed her that the Will was executed in her favour and asked her to search for the said Will at the residence.”

(Emphasis supplied)

26. The Petitioner, in her statement recorded at the next hearing i.e., 14.10.2024, accepted the statement of Mr. Manoj Sharma (attesting witness no. 1) and said that she had been informed about the execution of the Will on 22.01.2024. She further clarified that Mr. Vishnu Sharma (attesting witness no. 2) was also present on 22.01.2024 when Mr. Manoj Sharma



informed her about the said Will. The relevant portion of the statement reads as under:

“I state that I was informed about the existence of this Will by Mr. Manoj Sharma on my way back from Haridwar after completing the last rituals of Ms. Sangam Sharma.

I state that I have not mentioned in this petition that Mr. Manoj Sharma had informed me about the existence of the Will on the way back from Haridwar. Mr. Vishnu Sharma was present when we were returning from Haridwar and it was in the presence of Mr. Vishu Sharma that Mr. Manoj Sharma informed me about the existence of the Will.

I state I have not disclosed the said fact that I learnt about the Will on the way back from Haridwar in the written statement filed in CS(OS) 155/2024.”

(Emphasis supplied)

27. However, Mr. Vishnu Sharma (attesting witness no. 2), whose statement was recorded on 09.10.2024 and 14.10.2024, unequivocally stated that he had never apprised anyone about the existence of the alleged Will dated 01.11.2023. The relevant portion reads as under:

“I state that I have not disclosed to anyone that I have signed the Will of Ms. Sangam Sharma since Ms. Sangam Sharma had asked me not to disclose this fact to anyone.”

(Emphasis supplied)

28. The averments made in the petition and the statements made by the Petitioner and the attesting witnesses, with respect to the date of knowledge of the Petitioner about the existence of the alleged Will, have material contradictions.

28.1 The statement of Petitioner recorded on 14.10.2024 accepting that Manoj Sharma apprised her about the existence of the Will in January 2024, fails to explain the circumstances in which the averment of 02.05.2024 was made in the petition at paragraph ‘2’, wherein she stated that she learnt



about the Will for the first time in May 2024. The same statement has been reiterated by the Petitioner in her written statement filed in CS (OS) 155/2024.

28.2 The statement of Mr. Manoj Sharma (attesting witness no. 1), that he apprised the Petitioner about the existence of the Will on 22.01.2024, in the presence of Mr. Vishnu Sharma (attesting witness no. 2), as stated by the Petitioner in her statement, while returning from Haridwar, is also contradicted by the statement of Mr. Vishnu Sharma who states that he never apprised anyone (which would include the Petitioner) about the Will. Mr. Vishnu Sharma in his statement makes no reference to the alleged discussion of 22.01.2024 between Mr. Manoj Sharma and the Petitioner.

29. The discrepancies between the assertions made in the petition regarding the date of knowledge of the Will's existence and the oral statements of the Petitioner, Mr. Manoj Sharma, and Mr. Vishnu Sharma recorded before the Court lead this Court to conclude that the Petitioner's claims regarding the chance discovery of a *photocopy* of the Will in the cupboard on 02.05.2024, are implausible.

30. The written statement in CS (OS) 155/2024 was filed by Petitioner on 20.05.2024 and the *photocopy* of the said Will was also filed along with it, to oppose the relief for partition of the estate of the Testatrix and setting in motion a defence to prolong the litigation. This Court is left with the distinct impression that the alleged Will was set-up for the purpose of being submitted alongside the written statement.

31. Mr. Manoj Sharma (attesting witness no. 1) is defendant no. 2 in the CS (OS) 155/2024 and nominees of Mr. Vishnu Sharma (attesting witness no. 2) as well are defendants in the said civil suit, where Respondent No. 3



has challenged the Petitioner's action of selling eight (8) flats standing in Property No. 24-25-A. The animosity of attesting witnesses, Mr. Manoj Sharma and Mr. Vishnu Sharma, against Respondent No. 3 is writ large in these facts.

32. Such material contradictions *qua* the alleged date of Petitioner's knowledge of the Will, the absence of the original of the Will and the pendency of litigation between the parties raises grave doubts in the conscience of this Court with respect to the genuineness of the *photocopy* of the alleged Will dated 01.11.2023.

The Will is surrounded by suspicious circumstances

33. The Petitioner, in her petition, deposed that Testatrix did not confide in her about the execution of the alleged Will and therefore she was not aware about the alleged Will prior to its discovery on 02.05.2024. The attesting witnesses have also stated that there was no other person present when the Will was allegedly executed on 01.11.2023.

34. It is a matter of record that Petitioner used to reside with the Testatrix in the same premises. As per the Will, Testatrix bequeath her entire estate to the Petitioner. In these facts, the non-disclosure of the Will to the Petitioner by the Testatrix does not stand to reason. Ordinarily, a testator/testatrix withholds the execution of the testament from a legal heir who is sought to be excluded and not the legal heir who is receiving the bequest. In fact, common prudence would demand that the Testatrix would make all efforts to inform the legatee/Petitioner about the execution of the Will so that the legatee gets the benefit.

35. Will is a valuable document and has serious legal consequences as it affects the devolution of titles in immovable property. A testator/testatrix



would ordinarily take all care to ensure that such a valuable document is preserved safely and is readily available for the legatee post demise. The Petitioner's assertion that she was not informed about the execution of the original Will by the Testatrix is a suspicious circumstance which points against the existence of the Will.

36. Believing the submission of the Petitioner that the original of the Will is untraceable and *photocopy* is lying around in a cupboard would be naïve on the part of the Court as it is contrary to common prudence and how parties would ordinarily plan their inheritance.

37. Assuming, even if any such document existed, there is no credible evidence on record if it was either lost or destroyed unintentionally.

38. In the petition, the Petitioner has made the following averments about the efforts made to trace the original of the alleged Will. The relevant paras read as under:

“6. The Petitioner continued her search for Original copy of the Will and was contacting some friends and relatives of her family but her search did not bear fruit. The petitioner seeks liberty to establish the existence of the will by seeking shelter under section 58(ii) r/w 60(c) of Bhartiya Sakshya Adhiniyam, 2023.

7. The Petitioner continued her search for Original copy of the Will and was contacting some friends and relatives of her family but her search did not bear fruit.

8. It is pertinent to mention that Respondent No. 3, sometimes with her husband, and sometimes with her husband and father-in-law used to visit 121, Ground Floor, Shubham Apartment, Sector-12, Pocket-4, Dwarka, New Delhi- 110077. The Petitioner is convinced that either Respondent No. 3 or her husband or her father-in-law found is the original Will and decamped with the same as the said instrument went against the interests of Respondent No. 3.

9. It can be seen that only Respondent No. 3 stands to benefit by non- production, disappearance, loss or mislaying of the Original



Will as due to which the Respondent No. 3 in her Suit bearing No. CS(OS) 155/2024 titled Smt. Sulekha Sharma versus Ms. Surbhi Sharma & Others is claiming to be owner of one half of the properties details of which have been mentioned.

10. The Petitioner verily believes that that the original will exists and is in custody of Respondent No. 3.

(Emphasis Supplied)

39. The averments made in the petition alleging that Respondent No. 3 may have removed the said Will is speculative, self-serving and unsubstantiated. The Petitioner admittedly did not serve any notice on Respondent No. 3 in the civil suit or prior to filing this petition seeking production of the alleged Will.

40. The Coordinate Bench of this Court in **Ashwini Kumar Aggarwal v. B.K. Mittal**¹ emphasized that without credible evidence regarding the existence or destruction of the original Will, granting probate for a photocopy is inappropriate. The relevant part of the judgement reads as under:

“5. The above resume of the facts of this case show that Section 237 of the Act squarely applies in this case and the ingredients thereof are not proved for granting probate of a copy of the Will. I may note that Courts are deliberately hesitant to grant probate of a photocopy of the Will inasmuch as Will as a document can be revoked by destroying the same in any manner and absence of the original can strongly mean that the Will was revoked. Therefore, once the original Will is not on record, there has to exist on record such amount of credible evidence to show that the original of the Will was never destroyed by an intentional act of the testator or if the original Will is still available the same is lost or misplaced or the original is with a person who is deliberately not producing the same. **In the absence of evidence in this regard, and that too credible evidence which the Court can believe, Courts do not grant probate of copies of the Will except in the circumstances**

¹ 2014 SCC OnLine Del 3462



which are specified in Sections 238 to 240. In my opinion, this limited aspect of original Will not being on record and no evidence led for granting copy of the Will as per Section 237, is enough to allow the appeal and set aside the impugned judgment of the probate court dated 7.1.2012.”

(Emphasis Supplied)

41. In the considered opinion of this Court, the averments at paragraph nos. 6 to 10 of the petition fail to satisfy the judicial conscience of this Court with respect to the non-traceability of the original. As such, the necessary conditions of Section 237 of the Act of 1925 are not met.

42. Respondent No. 3 along with the Petitioner are the only natural legal heirs of the Testatrix. As noted above Respondent No. 3 has been excluded entirely under the propounded Will. In the case of **H. Venkatachala Iyengar v. B.N. Thimmajamma & Ors.**², a celebrated judgment with respect to the proof of Wills, the Supreme Court held that if the propounder significantly benefits from the will, this too is considered a suspicious circumstance requiring clear evidence for resolution. The relevant part of the judgment reads as under:

“21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they

² AIR 1959 SC 443



exercised jurisdiction with reference to wills; but any objection to the use of the word “conscience” in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question, and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in *Harmes v. Hinkson* [(1946) 50 CWN 895] “where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth”. It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.”

(Emphasis Supplied)

43. Also, the Supreme Court in **Anil Kak v. Sharada Raje**³, opined that the Court is required to adopt a rational approach while considering the question of grant of probate and is furthermore required to satisfy its conscience as existence of suspicious circumstances plays an important role.

The relevant part of the judgment reads as under:

“52. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also

³ (2008) 7 SCC 695



the execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/or letters of administration with a copy of the will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.

53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.

54. It may be true that deprivation of a due share by (sic to) the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a will.”

(Emphasis Supplied)

44. Considering the aforesaid precedents, a fundamental question which arises as to what could be the reason for the Testatrix being desirous of providing all her estates to the Petitioner by completely ousting her another sister/Respondent no. 3. There is absolutely no contemporaneous material on record to show that Testatrix was estranged from Respondent No. 3. On the contrary the 2022 documents executed between the parties for Property no. 24-25-A show that parties had an amiable relationship and were mutually dealing with their joint assets. The exclusion of Respondent No. 3 in the propounded Will is therefore a suspicious circumstance.

45. The submission of the Petitioner that she may be permitted to validate the *photocopy* of the Will by leading secondary evidence as per Section 58(ii) r/w 60(c) of Bhartiya Sakshya Adhiniyam, 2023 ('BSA') is also not tenable.

45.1 Section 58(ii) of BSA mandates that for a photocopy to be admissible as secondary evidence, credible evidence must be provided by a witness who has observed the preparation of the copy from the original document. The Petitioner, by her own admission, has never seen the original Will, which directly contravenes this requirement. Furthermore, there is no fact



that the *photocopy* was created in her presence, which weakens her position, as it indicates a lack of direct knowledge regarding the authenticity of the *photocopy*. Additionally, the purported *photocopy* was not made in the presence of either of the attesting witnesses. Section 58(ii) necessitates that a competent witness; someone who can affirm the accuracy of the copy; must be present. Given that neither the Petitioner nor the attesting witnesses can substantiate that the *photocopy* is a true representation of the original, they collectively lack the requisite competence to validate the document's authenticity.

45.2 Section 60(c) of BSA, governs the admissibility of secondary evidence. It stipulates that secondary evidence may only be admitted when the party seeking to introduce it demonstrates that the original document is unavailable due to specific circumstances, such as loss or destruction. The Petitioner has failed to provide adequate proof of the unavailability of the original Will or to show that any such circumstances exist. Consequently, she has not met the burden of proof necessary to invoke the provisions of this section. The High Court of Karnataka in **State of Karnataka v. M Muniraju**⁴ held that the xerox copy of a document is inadmissible as it is not a substantive piece of evidence.

45.3 Therefore, the Petitioner has not even *prima facie* satisfied the legal requirements set forth in Sections 58(ii) and 60(c) of BSA to be able to validate the *photocopy* of the Will.

46. Based on the statements of the witnesses and the Petitioner, as reproduced, discussed, and analyzed in the foregoing paragraphs, the burden

⁴, AIR 2002 Kar 287, 310, at para 57, 58



placed on the propounder to remove all suspicious circumstances surrounding the Will has been inadequately discharged in the petition.

47. Moreover, the alleged Will is merely a *photocopy* and is unregistered. It is admitted that Respondent No. 3 disputes the execution and existence of the said Will. This is bound to give rise to the issue on behalf of Respondent No. 3 that no such Will was ever executed by the Testatrix. In these facts, the first issue that the Court would have to examine is the validity of the signatures of the Testatrix on the alleged Will. For examining the validity of the signatures, the existence of the original of the Will is necessary and indispensable. The signatures of the Testatrix as they appear on this *photocopy* cannot be verified by a forensic test. In these facts, a petition seeking probate of *photocopy* of an unregistered Will, which is disputed cannot even be entertained, as the signatures of the Testatrix on the *photocopy* cannot be proved.

48. Entertaining a petition for probate entails serious consequences on the devolution of estate of the deceased. The rapid technological advancements which enable lifting signatures from existing documents by scanning them and placing them on other documents, is an aspect of technology which makes preparation of forged documents highly probable. This technology is commonly available and makes a disputed document highly suspect.

In this regard it is imperative to refer to the ratio of the High Court of Bombay in **Ganpat Pandurang Ghongade v. Nivrutti Pandurang Ghongade**⁵ wherein the Court opined that in the process of preparing a xerox copy, there can be several manipulations, hence, it is unsafe to act upon such a xerox copy.

⁵ 2008 SCC OnLine Bom 298, at para 13



49. The attesting witnesses to the Will i.e., Mr. Manoj Sharma and Mr. Vishnu Sharma along with the Petitioner are admittedly embroiled in a bitter litigation against Respondent No. 3, and the unity of interest of the Petitioner, along with the attesting witnesses and their animosity against Respondent No. 3 is also writ large on the record of the proceedings in CS (OS) 155/2024. The said attesting witnesses are not independent witnesses and therefore their testimony alone cannot suffice to prove the alleged Will.

50. In these facts, initiating the process of probate on the basis of *photocopy* of an unregistered Will in the case where the document is disputed, appears to this Court to be an exercise in futility. And the only purpose it seeks to achieve is to derail the adjudication of CS(OS) 155/2024 to the advantage of the Petitioner and the attesting witnesses.

51. The Will has conveniently surfaced at the time of filing of the written statement in CS (OS) 155/2024, which suit includes the relief of partition of the estate of the Testatrix as per the law of intestate succession. This act of the Petitioner also leads this Court to believe that the *photocopy* of the Will is not a genuine document and has been created post-facto to set up a defence in CS (OS) 155/2024.

52. As noted above, the Will completely excludes Respondent No. 3 who is the natural legal heir and bequeaths the entire estate to the Petitioner. There is no independent verifiable document on record to show that Testatrix had an estranged relationship with Respondent No. 3. This itself is a suspicious circumstance and when seen in the conspectus of the facts noted above i.e., (i) absence of the original Will; (ii) material contradiction in the statement of the propounder and the attesting witnesses with respect to Petitioner's knowledge of the date of existence of the Will; (iii) absence of



Petitioner's knowledge of the Will during the lifetime of the Testatrix; and (iv) the animosity of the Petitioner and attesting witnesses against Respondent No. 3 *qua* the sale of eight (8) flats constructed on Property No. 24-25-A also gives an impression to this Court that it is not beyond the realm of consideration that the purported *photocopy* of the Will is a forged document created to oust the Respondent No. 3 from her claim of inheritance and to create undue pressure on her to settle the civil suit.

53. The Petitioner has relied upon several judgements wherein the courts have given various distinguished circumstances for granting or rejecting probate petitions in the absence of its original. The Court has perused the compilation of judgments and has distinguished those cases in which the Will in question is merely a photocopy.

- (i) In **Jagjit Singh Rikhy v. State**⁶, probate was granted for a photocopy of a holograph Will. Moreover, the petitioner therein could successfully prove the valid execution of the Will along with credible evidence from multiple witnesses, including that the Will (in question) was drafted by a retired High Court judge, who stepped into the witness box and confirmed the same. Moreover, the judicial Magistrate who had authenticated a copy of the Will after comparing with the original also appeared in the witness box. The said facts are completely distinguishable and inapplicable to the case in hand.
- (ii) In **Ashok Kothari v. Dipti Bavishi**⁷ the probate was granted for a photocopy because the Court found that the Will was validly executed by the evidence presented, including the authenticated photocopy of the Will and testimony from attesting witnesses, established its

⁶ 196 (2013) DLT 217



authenticity and compliance with legal requirements, including the contents of the Will which did not completely oust the daughter (Dipti) from the Will, making the intentions of the Testatrix clear. Most significantly, the Court therein observed that there was no real challenge to the signature of the testator on the authenticated photocopy of the Will. The challenge in the said matter was with respect to the mental capacity of the testator. The said facts are completely distinguishable and inapplicable to the case in hand.

- (iii) In **Ishur Chunder Surmah v. Doyamoye Debea**⁸ the Court reversed the lower court's decision and remanded the case for retrial, allowing both parties to present evidence regarding the photocopied Will's status, as the High Court found that the dismissal by the Id. District Judge was erroneous, stating that the existence and potential destruction of the Will must be established through evidence. In the said case, the fact that the testator had executed the Will was admitted to by both the parties. The only point of consideration before the District Court was whether the original Will had been destroyed by the testator with an intent to revoke the Will. The said facts are completely distinguishable and inapplicable to the case in hand.

54. Therefore, to rely on the fact that an important legal document, such as a Will, has not been preserved in original considering that this document is purported to be the last and final testament of the Testatrix, with only a *photocopy* available, which was also discovered under questionable circumstances lying around in a cupboard by the Petitioner on the

⁷ 2006 SCC OnLine Cal 445

⁸ (1882) ILR 8 CAL 864



02.05.2024, fails to persuade this Court to even prima facie accept such a document as the last testament and Will of the Testatrix.

55. To summarize, having examined the record and the statements of the Petitioner and the attesting witnesses, this Court is of the considered opinion that no probate can be granted for the photocopy of the alleged Will dated 01.11.2023 in view of the following facts apparent from the record: -

- (i) The statement of the Petitioner that she became aware of the existence of the *photocopy* of the Will on 02.05.2024 is falsified by the statement of attesting witness nos. 1 and 2
- (ii) Respondent No. 3, a natural legal heir of the Testatrix has been wholly excluded under the alleged Will. There is no contemporaneous evidence to show that the relationship between Testatrix and Respondent No. 3 was estranged and therefore her exclusion is a suspicious circumstance which has not been satisfactorily explained in the petition.
- (iii) Respondent No. 3 in January 2024 instituted a civil suit CS(OS) 155/2024 seeking partition of the estate of the Testatrix on the plea that the Testatrix died intestate, wherein the Petitioner was arrayed as Defendant No. 1 and Mr. Manoj Sharma (attesting witness No. 1) as Defendant No. 2.
- (iv) Petitioner, Respondent no. 3 and the Testatrix had 1/3rd share each in Property No. 24-25-A, Sewak Park Extension, Uttam Nagar, New Delhi. In the aforesaid civil suit, Respondent No. 3 has also challenged Petitioner's action of transferring eight (8) flats constructed on Property No. 24-25-A, Sewak Park Extension, Uttam



Nagar, New Delhi, while acting as an attorney, in favour of nominees of attesting witness nos. 1 and 2.

- (v) In the peculiar facts of this case, attesting witness nos. 1 and 2 are interested parties and not independent witnesses. They have interests adverse to Respondent No. 3 and they also have an animosity against Respondent No. 3.
- (vi) There are therefore *ex-facie* pending disputes and animosity between Respondent No. 3 on one hand and Petitioner along with attesting witnesses on the other hand.
- (vii) The Petitioner's statement in the petition, and her statements given before the court during examination, regarding her date of knowledge of the existence of the Will i.e., 02.05.2024, contain material contradictions. The Petitioner has failed to adequately explain this significant discrepancy within the petition.
- (viii) Similarly, the statement given by attesting witness no. 1 with respect to 22.01.2024 has contradictions with respect to apprising the Petitioner regarding the existence of the Will vis-à-vis the averments in the petition and the statement of attesting witness no. 2.
- (ix) The Petitioner admits that the Testatrix never informed her about the execution and the existence of the alleged Will dated 01.11.2023, which is a suspicious circumstance as ordinarily the Testatrix would have shared such material information with the Petitioner/legatee.
- (x) The Petitioner admits that she has never seen the original Will and is unaware about the whereabouts of the said Will. The Petitioner and the attesting witnesses admittedly have no knowledge about the making of the *photocopy* of the Will. Thus, neither the Petitioner nor



the attesting witnesses are competent to prove the *photocopy* as they have no personal knowledge of its making as stipulated under Section 58(ii) of the BSA.

- (xi) The Petitioner has speculated that the original Will may have been unauthorizedly removed by Respondent No. 3 or her family members. The Petitioner has however no credible or real proof of the said allegation and she has not issued any notice to Respondent No. 3 for seeking the production of the original Will. Such pleadings cannot be sufficient to discharge the onus on the Petitioner under Section 237 of Act of 1925.
- (xii) The Petitioner admits that Respondent No. 3 disputes the validity of the Will. This plea give rise to the issue of genuineness of the signatures of the Testatrix as they appear on the Will. However, in the absence of the original document, the Will cannot be sent for a forensic test of the signatures. Thus, in these facts the validity of the signatures cannot be proved to the satisfaction of the Court.
- (xiii) Technological advancements make photocopies highly suspect. Fabrication of a document by lifting scans of signatures is highly probable. In such a scenario, granting probate on a *photocopy* of an unregistered Will, which is shrouded by suspicious cirbcumstances does not appeal to the conscious of this Court.
- (xiv) This *photocopy* has surfaced conveniently at the time when the Petitioner had to file a written statement in CS(OS) 155/2024. The written statement was filed on 20.05.2024 and the *photocopy* is alleged to have been discovered lying in a cupboard on 02.05.2024. The story of discovery of the document in the cupboard is incredulous



and to accept it would be naïve of the Court. The Will is not coming from a custody which can be relied upon by the Court.

(xv) The absence of the original unregistered Will, which is a valuable document and intended to devolve interest in immovable properties cannot be accepted lightly. It is a valuable document and bound to be preserved carefully. The absence of the original unregistered Will indicates to its non-existence.

(xvi) In the facts of this case, it appears that the *photocopy* has been set up to raise a false defence in the civil suit to prolong the legal proceedings and coerce the Respondent No. 3 to give up from her challenge to the sale of eight (8) flats in Property No. 24-25-A and to completely oust Respondent No. 3 from her rightful share in the estates of the Testatrix by claiming the probate on the false and fabricated *photocopy* of the alleged Will dated 01.11.2023.

56. Thus, the prayer of the Petitioner for grant of probate in relation to the *photocopy* of the unregistered Will dated 01.11.2023 is being dismissed essentially after finding several unexplained suspicious circumstances surrounding the said Will in question.

57. In view of the aforesaid findings and observations, the testamentary petition filed by the Petitioner stands dismissed and disposed of. All pending applications also stand disposed of.

MANMEET PRITAM SINGH ARORA, J

AUGUST 27, 2025/rhc/AM