IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 27.06.2025

\+ **C.R.P. 283/2019 & CM APPL. 52551/2019, CM APPL. 61968/2023**

AKEEL AHMAD .....Petitioner

versus

AMIT MODI & ORS .....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Varun Nischal, Mr. Karan Jain and Ms. Saira Tagra, Advs.

For the Respondents : Mr. K.K. Aggarwal, Mr. Rishi Diwan and Ms. Gayatri, Advs. for R- 1 to 4 & 6.
Mr. R.K. Dhawan, SC, DDA with Ms. Nisha Dhawan, Mr. V.K. Deng and Mr. Naman Kumar Thakur, Advs. for R-8 / DDA.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed challenging the order dated 27.09.2017 (hereafter '**impugned order dated 27.09.2017**') and the order dated 16.07.2019 (hereafter '**impugned order dated 16.07.2019**'), passed by the learned Additional District Judge, Tis Hazari Court, Delhi ('ADJ') in civil suit bearing No. 2386/1996.

2. Briefly stated, the facts of the case are that a Civil Suit bearing No. 2386/1996 was filed by one Ms. Swaran Lata d/o Sh. Harish Chand/ plaintiff seeking cancellation/ declaration and permanent injunction, claiming herself to be the owner of the property bearing No. 184, Saini Enclave, Vikas Marg, New Delhi (hereafter "**suit property**"). The plaintiff claimed that she was a Sadhvi and remained unmarried throughout her life and that the defendants Nos. 1 to 6 (respondents in the present petition) had illegally occupied the suit property asserting that they had purchased the same from each other.

3. The petitioner had, on a previous occasion, filed an application under Order I Rule 10 of the CPC seeking impleadment in the suit in place of the plaintiff or in the alternative, as a co-plaintiff, on the ground that in an earlier suit bearing No. 752/1996 filed by the plaintiff against him, a compromise had been arrived at between the parties on 26.03.1997, which led to the execution of the abovementioned documents being, Agreement to Sell dated 28.06.1994 and the Will dated 04.03.1996. The said application came to be dismissed by the Court *vide* order dated 06.01.1999.

4. The suit was pending for plaintiff's evidence when the plaintiff expired on 17.08.2015, whereafter the petitioner filed an application under Order XXII Rule 3 of the CPC for being substituted as LR of the deceased plaintiff on the basis of the Will dated 05.04.2006.

5. The petitioner claimed that he had entered into an Agreement to Sell dated 28.06.1994 with the deceased plaintiff, in respect of the suit

property. He relied on receipts to show that he had also made payments towards the purchase of the suit property in terms of the Agreement to Sell, whereafter the deceased plaintiff executed a Will dated 04.03.1996 in favour of the petitioner, deposing that as long as she is alive she shall remain the absolute owner of the suit property and that after her death, the same shall devolve upon the petitioner. He further claimed that the Will dated 05.04.2006 confirmed the Will dated 04.03.1996 thereby making him a legal representative of the deceased plaintiff in terms of Section 2(11) of the CPC and in view of the judgement passed by the Hon'ble Apex Court in ***Custodian of Branches of BANCO National Ultramarino Vs. Nalini Bai Naique*** **: AIR 1989 SC 1589** wherein it was held that the definition of legal representatives has a wider scope and is not confined to legal heirs.

6. The petitioner examined attesting witnesses namely– Sh. Dalip Singh and Sh. Gulshan Bhandari, who testified that the deceased plaintiff had signed the Will in their presence at Karkardooma Courts, on 05.04.2006.

7. The learned ADJ, by impugned order dated 27.09.2017, dismissed the application filed by the petitioner under Order XXII Rule 3 of the CPC. The learned ADJ held that the testimonies of the attesting witnesses are contradictory and reveal that the deceased plaintiff and the witnesses had not signed the Will in the presence of each other, and therefore the requirements under Section 63(c) of the Indian Succession Act, 1925 had not been satisfied. It was noted that

Sh. Gulshan Bhandari (AW-2) specifically denied the presence of Sh. Dalip Singh (AW-1) when the Will was signed by the deceased plaintiff and himself.

8. The petitioner challenged the impugned order dated 27.09.2017 in review application No. DJ/375/2017, claiming that owing to the fact that Sh. Gulshan Bhandari is now aged, weak and his hearing is impaired, he was not capable of giving proper testimony before the Court and therefore the learned ADJ fell in error by recording his denial of the presence of Sh. Dalip Singh. In this regard, the petitioner relied on the judgement passed by the Hon'ble Apex Court in ***Mahesh Kumar v. Vinod Kumar*** **: (2012) 4 SCC 387**, wherein it was held that signatures of two attesting witnesses are not required to be appended simultaneously.

9. The learned ADJ while dismissing the review application filed by the petitioner *vide* the impugned order dated 16.07.2019, relied on various judgements passed by the Hon'ble Apex Court, and was of the view that the arguments raised by the petitioner could not be considered in a review as the same would amount to reappreciation of facts.

10. Aggrieved by the same, the petitioner has preferred the present revision petition before this Court. It is the case of the petitioner that the learned ADJ erred in holding that the requirements of Section 63(c) of the Indian Succession Act, 1925 had not been satisfied, despite the fact that the deceased plaintiff signed/ put her thumb

impression on the Will in the presence of both Sh. Gulshan Bhandari and Sh. Dalip Singh in the chambers of Advocate Dasa Ram at Karkardooma Courts. [Ref: ***Mahesh Kumar v. Vinod Kumar*** *(supra)*]

11. The learned counsel for the petitioner submitted that Sh. Gulshan Bhandari cannot be presumed to be capable of giving evidence and that the learned ADJ erred in noting that he has denied the presence of Sh. Dalip Singh at the time of signing of the Will.

12. He submitted that the deceased plaintiff had executed another Will dated 04.03.1996 in respect of the suit property in favour of the petitioner which is a registered document, and that the Will dated 05.04.2006 reflects the same fact. He relied on the reply filed by the deceased plaintiff to the application filed by the petitioner under Order I Rule 10 of the CPC on an earlier occasion, which states that she had executed the Will dated 04.03.1996 in favour of the petitioner in terms of a compromise arrived at between the parties.

13. He submitted that the title documents of the petitioner were not relied upon by the Hon'ble Court while deciding the application under Order I Rule 10 of the CPC.

14. *Per contra*, it is the case of the respondents that the suit property was originally allotted by the Government to Respondent No. 3, namely– Mrs. Swarn Lata d/o Harish Chand w/o Sh. S.R. Saini (Respondent No. 4) *vide* Perpetual Lease Deed dated 03.04.1976. It is stated that Respondent No. 3 sold the suit property to Respondent No.

5, namely– Sh. Vivek Dutt, who further sold the property to Respondent No. 6, namely/– Sh. Ahok Kumar, who finally sold the property to Respondent No. 1.

15. It is stated that Respondent No. 1 applied to the Delhi Development Authority ('DDA')/ Respondent No. 8 for conversion/ freehold of the suit property in his name, under the Scheme of Conversion from Leasehold to Freehold. The deceased plaintiff is stated to have lodged a complaint claiming to be the original allottee, however on verification by the DDA, the claims of the deceased plaintiff were found to be false and a Conveyance Deed dated 22.11.1995 was executed in favour of Respondent No. 1. In this regard, reliance is placed on the Written Statement filed by the DDA in the Civil Suit bearing No. 2386/1996.

16. The learned counsel for Respondent No. 1 argued that the deceased plaintiff was wrongly claiming to be the owner of the suit property on the basis of the fact that the Lease Deed was bearing the name of Swarn Lata d/o Sh. Harish Chand, whereas page 10 of the said Lease Deed bears the endorsement of Mrs. Swarn Lata w/o S.R. Saini.

17. He stated that previously as well the application was filed by the petitioner under Order I Rule 10 of the CPC on the basis of the same set of documents being Will dated 04.03.1996 and an Agreement to Sell dated 28.06.1994, however the application was dismissed *vide* order dated 06.01.1999 and now the same has attained finality since

the Appeal FAO (OS) No. 29/1999 preferred by the petitioner was dismissed *vide* order dated 03.02.1999. He submitted that the plaintiff even failed to comply with the order passed by the Court on 23.02.2001, to produce the original Lease Deed, which reflects that she was not the original allottee.

18. He submitted that the stay obtained by the deceased plaintiff under Order XXXIX Rule 1 and 2 of the CPC in the Civil Suit bearing No. 2386/1996 was vacated by the Court *vide* order dated 06.08.2002, holding that the deceased plaintiff appears to have no right, title or interest in the sit property, and is attempting to conceal material facts, and now the same has attained finality since the deceased plaintiff did not succeed in the appeal against the said order. He submitted that in this regard, the petitioner does not have a better title than the deceased plaintiff.

19. He relied on the order dated 10.10.2005, passed by the Court, dismissing the application filed by the petitioner claiming himself to be the attorney of the plaintiff. The Court, while taking note of the order dated 06.08.2002, held that the petitioner is attempting to obtain a relief which he could not obtain earlier.

20. It is stated that the petitioner filed a Writ Petition bearing No. 8277/2008 before the High Court, seeking direction for cancellation of the Conveyance Deed dated 22.11.1995 in favour of Respondent No. 1 and directions to Sub- Registrar for deletion of endorsement of Respondent No. 3 on the Lease dated 03.04.1976, wherein Respondent

No. 1 was not even made a party. The said Writ Petition No. 8277/2008 is stated to have been disposed of by order dated 27.11.2008, with a direction to hear the petitioner regarding correction of the endorsement and to pass an order thereafter. He submitted that this led to the issuance of Show Cause Notice dated 27.04.2011 upon Respondent No. 1 and changes in the endorsement from "Mrs. Swarn Lata w/o S.R. Saini" to "Ms. Swarn Lata d/o Harish Chand", whereafter Respondent No. 1 challenged the same before the High Court *vide* Writ Petition bearing No. 4758/2011, wherein the Court was pleased to injunct the Show Cause Notice dated 27.04.2011. Respondent No. 1 is also stated to have filed a Review petition bearing No. 426/2011 for recall of the order dated 27.11.2008, which was allowed by the Court with a direction that all the parties are at liberty to agitate the issue before the appropriate court of jurisdiction, unaffected by any observation made in order dated 27.11.2008.

21. He has further relied on the reply filed by the deceased plaintiff to the application under Order VII Rule 11 of the CPC, wherein she has clearly stated that the Hon'ble Court rightly dismissed the application filed by the petitioner under Order 10 Rule 1 of the CPC as she is the sole owner of the suit property.

22. He further submitted that there are several other claimants who have been duped by the deceased plaintiff, and a number of them having filed suits which have been dismissed recording that the original title deed is with Respondent No. 1. He submitted that

pursuant to an investigation carried out by the Central Bureau of Investigation ('CBI') it was found that DDA has confirmed that the suit property was leased out to Respondent No. 3 and that DDA has converted the said suit property into freehold land in the name of Respondent No. 1. He stated that it has been revealed that the deceased plaintiff is part of a gang of criminals who have impersonated Mrs. Swarn Lata.

23. This Court has heard the parties and perused the record.

24. At the outset, it is relevant to note that the petitioner has challenged the impugned order by invoking the revisional jurisdiction of this Court. It is trite law that the scope of revision under Section 115 of the CPC is very limited and is to be exercised only if the subordinate Court appears to have exceeded its jurisdiction or to have failed to exercise its jurisdiction, or if the subordinate Court has exercised its jurisdiction illegally or with material irregularity.

25. In the impugned order dated 27.09.2017, the learned ADJ has perused the application filed by the petitioner and the evidence, to find that all the documents relied upon by the petitioner have already been considered at the time of deciding his application under Order I Rule 10 of the CPC, except the Will dated 05.04.2006 and therefore the matter was listed for inquiry under Order XXII Rule 5 of the CPC. To prove the said Will dated 05.04.2006, the petitioner examined two attesting witnesses namely– Sh. Dalip Singh and Sh. Gulshan Bhandari. The learned ADJ was of the view that the testimonies of the

witnesses reveals that the deceased plaintiff being the testator and the attesting witnesses had not signed the Will in the presence of each other, as Sh. Gulshan Bhandari has specifically denied the presence of Sh. Dalip Singh during the execution of the Will and having signed the same in his presence.

26. A bare perusal of the application under XXII Rule 3 of the CPC shows that the petitioner was claiming that the deceased plaintiff being the owner of the suit property left behind a registered Will dated 04.03.1996, whereafter another Will dated 05.04.2006 was executed by her in his favour, which repeats the contents of the earlier Will dated 04.03.1996 and confirms the same. The said application was filed along with an application for condonation of delay, stating that the demise of the plaintiff had come to the knowledge of the petitioner some time in October, 2015, whereafter he went to the place of residence of the deceased plaintiff to confirm the said fact.

27. The issue regarding substitution as a Legal Representative under Order XXII Rule 3 of the CPC, on the basis of a Will is well settled in a number of decisions of the Hon'ble Apex Court. It is trite law that the objective of Order XXII Rule 3 of the CPC is to facilitate the effective continuation and final adjudication of proceedings, rather than to hinder or prolong them. Being a procedural instrument, Order XXII is to be construed in a flexible manner, with the aim of delivering substantial and meaningful justice to the parties concerned.

The Hon'ble Apex Court in ***Kedar Lal v. Babu Lal Vyas*** **: (2003) 9 SCC 624**, held as under:

> *"3.* ***According to the appellant, Kalawati, during her lifetime had executed a Will in favour of the appellant which sought to convey to the appellant "the right to plead the said case" and "the right to all debts and credits as may be decided by the court". In 1996 Kalawati died. The appellant made an application for being substituted as the plaintiff in place of Kalawati as her legal representative under the Will. The application was dismissed by the trial court on the ground that the Will had merely sought to effect a transfer of a right to sue*** *and that by virtue of Section 6(e) of the Transfer of Property Act such a transfer was impermissible in law.* ***The application of the appellant being rejected by the trial court, the appellant preferred a revisional application under Section 115 of the Code of Civil Procedure, 1908. The revisional application was also dismissed, it appears on two grounds viz. (i) Kalawati had died long back and the appellant had not applied for substitution of her legal heirs, and (ii) the right to sue did not survive to the appellant.***
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> *4.* ***The appeal of the appellant preferred from this impugned order must be allowed.*** *The first reason given by the High Court proceeds on an incorrect statement of fact. The appellant was claiming as Kalawati's heir and it is nobody's case that the application for substitution had been made after any delay. As far as the second reason given by the High Court is concerned, the Court does not say why the right which Kalawati had to sue did not survive to the appellant, and, given the circumstances of the case, we are unable to find any reason in support of the second conclusion of the High Court.*
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> *5. The trial court also erred in rejecting the application of the appellant because of the provisions of Section 6(e) of the Transfer of Property Act.* ***As we have noted above, Kalawati had not only sought to transfer the mere right to represent her case in the pending litigation to the appellant but had also given the appellant her interest in the subject-matter of the litigation. For these reasons, the decision of the High Court is set aside. The application for substitution filed by the appellant must be allowed, however, leaving the question of the validity and genuineness of the Will open. Let the appellant be substituted in place of Kalawati in the pending proceedings and the suit be proceeded with in accordance with law.*** *"*

(emphasis supplied)

28. The Hon'ble Apex Court in ***Suraj Mani v. Kishori Lal*** **: 1976 SCC OnLine HP 16** held as under:

> ***"5.*** *The contention of learned counsel for the petitioner is that by the impugned order the learned Senior Subordinate Judge has permitted a trespasser to be brought on the record and has enabled him thereby to prosecute the suit. It is submitted by learned counsel that this is not permissible in law. I am unable to agree.* ***The definition of "legal representative" in Section 2(11) of the CPC is very wide. It will certainly include a person who seeks to represent the estate of a deceased person on the basis of a will said to be executed by the deceased in his favour. The estate will be sufficiently represented by such a person.*** *The learned Senior Subordinate Judge acted within his jurisdiction in substituting the respondent as the legal representative of the deceased. The substitution does not make the legal representative heir to the property of the deceased. It was pointed out by the Lahore High Court in Daulat Ram v. Mt. Meero, AIR 1941 Lah 142, in a case where the legal representative of a deceased plaintiff was brought on the record, that a decision to do so under Order 22, Rule 5 must be limited to the purpose of carrying on the suit and cannot have the effect of conferring any right to heirship or to property.* ***Even if the learned Senior Subordinate Judge has held that the will relied on by the respondent is a valid will, that finding had been rendered merely for the purpose of enabling the prosecution of the suit to go on. It cannot be construed as a decision on the merits of the suit. The finding that the will is valid cannot operate as res judicata where that very question needs to be decided in order to resolve the controversy in the suit on its merits. I am supported in this view by Parsotam Rao v. Jankibai, (1906) ILR 28 All 109; Antu Rai v. Ram Kinkar Rai, ILR 58 All 734 : (AIR 1936 All 412) and Chiragh Din v. Dilwar Khan, AIR 1934 Lah 465. It was held by the Allahabad High Court in Ram Kalap v. Banshi Dhar, AIR 1958 All 573 that an order under Order 22, Rule 5 involves a summary enquiry as to who should be substituted in place of the deceased party in the pending proceeding and that such a decision does not operate as res judicata. It is still open to the petitioner in the present case, during the trial of the suit, to establish that the will is incompetent and confers no right, title and interest on the respondent and that, therefore, the respondent is not entitled to any relief in the suit."***
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> (emphasis supplied)

29. In view of the aforesaid discussion, ordinarily a person is entitled to be impleaded as a Legal Representative of the deceased plaintiff, on account of the Will executed in his favour, the question of the validity and genuineness of which would be open in view of the judgement passed in ***Kedar Lal v. Babu Lal Vyas*** *(supra)***.** However, in regard the facts of the present case, the learned ADJ rightly observed that there have been numerous proceedings and pending litigation in respect of the suit property. The petitioner availed various remedies on the strength of the Will executed by the deceased plaintiff. As mentioned above, the petitioner had filed an application under Order I Rule 10 of the CPC seeking impleadment in the suit in place of the plaintiff or in the alternative, as a co-plaintiff, which was dismissed by the Court *vide* order dated 06.01.1999.

30. The Court while dismissing the application of the petitioner under Order I Rule 10 of the CPC made specific observations on merits. It was observed that the present suit filed by the deceased plaintiff does not mention the documents as relied upon by the petitioner, inspite of being allegedly executed before the filing of the present suit. It was also observed that the suit property was stated to have been sold by the plaintiff in favour of one Sh. Gulshan Kumar, who had filed an application for impleadment, however the same came to be dismissed in default. Moreover, it was noted that the suit No. 752/1996 (as mentioned in para 4 of this judgement) was itself a frivolous suit as it was filed by the deceased plaintiff seeking injunction against the petitioner from interfering with her possession,

whereas it is the plaintiff's own admitted position in the present suit, that she is not in possession of the suit property and therefore is seeking a decree of possession against the defendants. It was held that the petitioner has not placed any material on record to prove the derivation of right and title to the petitioner from the plaintiff.

31. It is pertinent to note that the learned Court made specific observations in regard to the interest and right of the petitioner to be impleaded in the suit while duly having considered the Will dated 04.03.1996. The petitioner did not succeed in the appeal filed by him being Appeal No. FAO (OS) No. 29/1999, against the order dated 06.01.1999. The order dated 03.02.1999 dismissing the appeal preferred by the petitioner is reproduced hereunder:

> *"Heard. We find no infirmity in the order of learned single Judge dismissing the appellant's application seeking impleadment as a co-plaintiff in the suit, after learned single Judge held that the appellant is neither a necessary nor proper party. The contention of behalf of the appellant that impugned order is liable to be set aside in as much s the learned Single Judge while disposing of the application has gone on merits of the case. Which might affect appellant's rights on merits of his claim, has no force. It is well settled the observations made in order while disposing of interlocutory applications cannot affect merits of the case, which will have to be decided dehors such observations and for that reason also rejection of appellant's application cannot adversely affect his rights. If any, on merits.*
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> *Dismissed."*

32. In the order dated 06.08.2002, while vacating the interim relief granted to the deceased plaintiff under the application filed by her under Order XXXIX Rule 1 and 2 of the CPC, restraining Respondent No. 1 from raising any construction on the suit property, the Court noted that the deceased plaintiff had made misrepresentations and

concealments with regard to certain documents and was guilty of suppression of material facts. It was observed as under:

> *"The present suit was instituted on 20.09.1996. The plaintiff has failed to disclose the fact that she had filed a suit in the District Court against one Mr. Aqeel Ahmed on 19.04.1996 or that she had executed agreement for sale, will, receipt in favour of the said Mr. Aqeel Ahmed on that she had soled the property to him. In the present suit, the defendant No. 1 is in possession of the suit property and it is in these circumstances that the plaintiff seeks to recover possession from the defendants.*
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> *The document which is stated to be the basis of the claim is stated to have been lost by the plaintiff. Learned counsel for the defendants contends that the plaintiff has not been able to establish her right, title or interest in the property. The photocopy of the sub-lease placed on record is an incomplete document as some important pages of the documents have not been filed. The defendants have placed on record a complete copy of the sub-lease along with the written statement. The lease deed shows that the same was executed by Smt. Swaran Lala wife of Shri S.R. Saini on 11.6.1976 which indicates that Smt. Swaran Lala was married prior to 1976. The document on the basis of which she claims to have acquired title shows that the said documents is executed by a married lady. The pages containing the endorsement of execution and signatures have been withheld by the plaintiff. The plaintiff appears to have filed the present suit on 20.09.1996, i.e. subsequent to the execution of the alleged receipt, will and agreement for sale in favour of Mr. Aqeel Ahmed and subsequent to the filing of the suit in the Court of Addl. District Judge. The suit filed in the District Court was a frivolous suit wherein she claimed to be in possession of the property and sought a restraint order against Mr. Aqeel Ahmed restraining him from interfering with the possession of the plaintiff. None of the defence in the present was taken in that suit. The suit in the District Court was decreed on the basis of compromise.*
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> *The factum of filing of the suit before the District Judge has not been disclosed in the present proceedings. All these facts go to show that the conduct of the plaintiff was dubious and prima facie she has no right, title or interest in the property. There is concealment and suppression of material facts in the present case."*

33. The Court in the order dated 10.10.2005, while dismissing the application filed by the petitioner claiming himself to be the attorney of the plaintiff, held as under:

"It is not in dispute that this very Akeel Ahmad had filed an application u/o 1 Rule 10 CPC for being impleaded a party. However, that application was dismissed by the Hon'ble High Court vide a detailed order dated 06-01-1999. Akeel Ahmad did challenge the order but did not succeed. An application u/o 39 Rule 1 & 2 CPC filed by the Plaintiff was dismissed by the Hon'ble High Court vide a detailed order dated 06-08-2002. At that time, the suit was pending disposal before the Hon'ble High Court. Here, I would like to mention that in the prayer, it was mentioned in clause B that the Defendants be restrained from raising any construction. ***The Plaintiff challenge the order dated 06-08-2002. It was disposed by the Hon'ble High Court with the following observations****:*

Counsel for the appellant says that the perpetual sub lease dated 01.04.1976 indicates that Swarn Lata is the daughter of Hari Charan. However, before the Sub Registrar it has been mentioned that she is the wife of Mr. S.R. Saini. To prove that Swarn Lata was not married to any S. R. Sani, Counsel for the appellant likes to place on record the documentary evidence as well as an affidavit of Mr. O.P. Saini, the then President of Saini Co-operative Group Housing Society Ltd. Let him do so before the Ld. Single Judge by way of appropriate application. With these observations, the appeal stands disposed of.

Counsel for the Plaintiff has submitted that the Plaintiff has right to move the application and there is justification before the court to restrain the Defendants from raising any construction. She has tried to base her arguments on the order dated 24-10-2002 passed by the Hon'ble High Court vide which the appeal of the Plaintiff against the order dated 06-08-2002 had been disposed of.

I have reproduced the order dated 24-10-2002. I do not find any thing favourable to the Plaintiff. Here, I would like to mention that the order dated 06-08-2002 is a detailed one touching every aspect of claim of the Plaintiff. There is no justification to pass an order on the application filed now to restrain the Defendants. Akeel Ahmad is trying to achieve something which he could not achieve earlier by moving this application. The application is therefore, dismissed. File be put up on the date fixed, i.e., 24-10-1004."

34. The said order dated 06.08.2006 is stated to have been challenged by the deceased plaintiff, however the appeal was dismissed. In this regard, the observations made in the order dated

06.01.1999 and Order 06.08.2002 have attained finality and cannot be disturbed after more than two decades.

35. In view of the above facts, the learned ADJ rightly took recourse to Order XXII Rule 5 of the CPC to conduct an inquiry. The petitioner examined two alleged attesting witnesses namely– Sh. Dalip Singh and Sh. Gulshan Bhandari, who have testified in their affidavits that the deceased plaintiff had signed the Will on 05.04.2006, in their presence at Karkardooma Courts.

36. Sh. Dalip Singh in his testimony has stated that on 05.04.2006 he met the plaintiff outside Karkardooma, whereafter he met the petitioner and the other attesting witness Sh. Gulshan Bhandari in a chamber of a lawyer inside the Court. He stated that the plaintiff, Sh. Gulshan Bhandari and himself had signed the Will in the said chamber, in the presence of each other.

37. Although the content of the affidavit filed by Sh. Gulshan Bhandari is more or less the similar to the affidavit filed by Sh. Dalip Singh, testifying that that the deceased plaintiff had signed the Will in their presence at Karkardooma Courts, on 05.04.2006 and that they had both attested on the said Will at the same time, Sh. Gulshan Bhandari during cross-examination has stated that on 05.04.2006, he met the plaintiff and Sh. Dalip Singh outside the Karkardooma Courts, whereafter the plaintiff took him inside the Court. He stated that he had signed the Will after the plaintiff had signed the same, however he stated that at the time of signing the Will only he was present with the

plaintiff and that the plaintiff did not sign the Will in the presence of Sh. Dalip Singh. He specifically denied having signed the Will in the presence of Sh. Dalip Singh and stated that Sh. Dalip Singh had signed the same later on in his absence.

38. The learned ADJ held that the testimonies of the attesting witnesses were contradictory and indicated that the deceased plaintiff did not sign the alleged Will in the presence two attesting witnesses and the witnesses did not sign the Will in each other's presence. Consequently, the conditions stipulated under Section 63(c) of the Indian Succession Act, 1925 were not satisfied.

39. The petitioner contends that the learned ADJ erred in concluding that the requirements of Section 63(c) of the Indian Succession Act, 1925 were not met, even though the deceased plaintiff had signed or affixed her thumb impression on the Will in the presence of both Sh. Gulshan Bhandari and Sh. Dalip Singh in the chambers of Advocate Dasa Ram at Karkardooma Courts. He placed reliance on the judgement passed in ***Mahesh Kumar v. Vinod Kumar*** *(supra)* wherein the Hon'ble Apex Court held that the difference in the point of time when the two attesting witnesses appended their signatures on the Will, is not a relevant factor.

40. It is imperative to appreciate the rationale behind the passing of the impugned order dated 27.09.2017. A will is required to be established in accordance with the provisions of Section 63(c) of the Indian Succession Act, 1925 together with Section 68 of the Evidence

Act, 1872. Section 63(c) of the Indian Succession Act, 1925 is reproduced hereunder:

> *"63. Execution of unprivileged Wills.—*
>
> *xxxx xxxx xxxx*
>
> *(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."*

41. Section 68 of the Evidence Act, 1872 is reproduced hereunder:

> *"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"*

42. The petitioner relied on the judgement passed by the Hon'ble Apex Court in ***M.B. Ramesh v. K.M. Veeraje Urs* : (2013) 7 SCC 490** wherein it was observed that minor discrepancies in the statement of attesting witnesses will not discredit their testimony. The learned ADJ rightly distinguished the facts in the said judgement with that in the present case. In ***M.B. Ramesh v. K.M. Veeraje Urs*** *(supra)* only one attesting witness was examined, who was silent on the fact as to whether the other attesting witness, who had expired before his examination, had signed the in the presence of the testator or/and whether the testator had signed in his presence. In that case, it was

held that the omission on part of the attesting witness to specify such detail may have been a facet of non-recollection of the facts, as the Will was executed 35 years prior from the date of his examination.

43. The view taken by the leaned ADJ that the facts in the present case are that of specific denial of the presence of the second attesting witness at the time of execution of the Will by the plaintiff, is reasonable. A perusal of the testimony of Sh. Gulshan Bhandari reveals that he has specifically stated that not only was he not present at the time when Sh. Dalip Singh signed the Will, he also mentioned that the plaintiff/ testator and himself had executed the Will only in the presence of each other and that Sh. Dalip Singh was not present at that time. As per his statement, the requirement of the Will being attested by two or more witnesses, each of whom having seen the testator execute the Will, has not been satisfied. In such circumstances, the statements given by both the attesting witnesses are extremely contradictory to each other and casts a doubt upon the genuineness of the will. It is trite law that cases, where the execution of a will is shrouded in suspicious circumstances, are treated differently.

44. The reliance placed by the petitioner on ***Mahesh Kumar v. Vinod Kumar*** *(supra)* is also misplaced as the facts in that case are at a different footing. In that case, there was some difference in the point of time when the two attesting witnesses had signed the Will. The Hon'ble Apex Court while holding that it was not necessary for the two attesting witnesses to append their signatures on the Will

simultaneously, took note of the other natural and ordinary circumstances of the facts of that case. While in the present case, not only is there extreme contradiction in the statements of the attesting witnesses which raises doubt on the genuineness of the Will, but also the documents relied upon by the petitioner have already been considered in the order rejecting the application filed by him under Order I Rule 10 of the CPC as well as the order dated 06.08.2002 vacating the interim relief granted to the deceased plaintiff under the application filed by her under Order XXXIX Rule 1 and 2 of the CPC. The appeals of the same have also been dismissed, thereby crystallising the specific observations made therein in respect to the rights and interests of the petitioner in the present case. The improbability of the Will having been validly executed by the plaintiff in favour of the petitioner was highlighted in the order dated 06.01.1999. It was noted that the suit which was dismissed on the basis of the compromise between the plaintiff and the petitioner, was itself a frivolous suit as it was filed by the plaintiff seeking injunction against the petitioner from interfering with her possession, whereas it is the plaintiff's own admitted position in the present suit, that she is not in possession of the suit property.

45. The Hon'ble Apex Court in ***H. Venkatachala Iyengar v. B.N. Thimmajamma*** **: 1958 SCC OnLine SC 31** has made detailed observations in respect of Section 63 of the Indian Succession Act, 1925 and concluded that when a Will is presented by a propounder, the Court must be satisfied of the fact that the said Will had been

validly executed by the testator who has departed. It was observed as under:

> *"18…. **Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed**. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. **It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.***
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> ***19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator**. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.*

> ***20.*** *There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.*
>
> ***21.*** *……**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 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."***
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> (emphasis supplied)

46. Now coming to the impugned order dated 16.07.2019 dismissing the review petition filed by the petitioner. The review

petition was filed on the ground that the provisions of Section 63 of the Indian Succession Act, 1925 have been satisfied in view of the judgement passed in ***Mahesh Kumar v. Vinod Kumar*** *(supra*). In the opinion of this Court, the view taken by the learned ADJ that consideration of the grounds of the petitioner would amount to re-appreciation of evidence is reasonable, since it is well settled that findings of facts and conclusions cannot be assailed in guise of review.

47. At this stage, it is relevant to note the scope and ambit of revisional powers under section 115 of the CPC. As held in ***ITI Ltd. v. Siemens Public Communications Network Ltd.*** **: (2002) 5 SCC 510,** the scope of revisional jurisdiction of the High Court, under Section 115 of the CPC remains restricted to cases wherein there is an irregularity in the order of the Trial Court and is limited to the purpose of correcting jurisdictional error committed by the Trial Court. The High Court cannot interfere with the factual findings of a Trial Court apart from exceptional cases. It was held as under:

> *"18. Power conferred on the High Court under Section 115 of the Code of Civil Procedure, 1908 over all subordinate courts within its jurisdiction is a supervisory power and has been distinguished from its power of appeal to correct errors of fact and law. The power of revision under Section 115 being in the nature of power of superintendence to keep subordinate courts within the bounds of their jurisdiction cannot be readily inferred to have been excluded by provisions of a special Act unless such exclusion is clearly expressed in that Act. The Arbitration and Conciliation Act of 1996 which is for consideration before us by provision contained in Section 37(3) of the said Act only takes away the right of second appeal to the High Court. The remedy of revision under Section 115 of the Code of Civil Procedure is neither expressly nor impliedly taken away by the said Act."*

48. Hence, from the above analysis, it is evident that this Court's authority to intervene under Section 115 of the CPC is restricted. Intervention is warranted only if the lower court's order is without jurisdiction or contains such irregularity or illegality that it results in a miscarriage of justice or causes irreparable harm to the affected parties. In the present case, the impugned order dated 27.09.2017 is a well-reasoned order, properly interpreted the law, and justly dismissed the petitioner's application under Order XXII Rule 3 of the CPC.

49. In view of the same, this Court also finds no infirmity with the impugned order dated 16.07.2019 passed by the learned ADJ, dismissing the review application filed by the petitioner.

50. The present petition is dismissed in the aforesaid terms.

51. Pending application(s) also stands disposed of.

AMIT MAHAJAN, J

JUNE 27, 2025