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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **TEST.CAS. 43/2005 and I.A. 22248/2014**

Between: -

DR. SRI KRISHAN
S/O LATE SHRI RAM LAL
VO GROUND FLOOR, (REAR PORTION)
22, PASCHIM MARG, VASANT VIHAR,
NEW DELHI-110057

.... PETITIONER

(Through: Mr. Sanjeev Mahajan, Mr. Rishabh Varshney and Ms. Simran Rao, Advs..)

AND

1. **THE STATE**
THROUGH GOVT. OF NCT OF DELHI
2. **SHRI S.M. ARORA (SINCE DECEASED)**
THROUGH
 - (i) **SMT. SNEH PRABHA ARORA**
WIDOW OF LATE SH. S.M ARORA
(DIED ON 31.05.2023)
 - (ii) **MRS. ANAMIKA KAPOOR**
WIFE OF SH. SANJAY KAPOOR
R/O 116, SAMARAT APARTMENT
B-11, VASUNDHARA ENCLAVE
NEW DELHI-110096
 - (iii) **SH. ANIMESH ARORA**
SON OF LATE SH. S.M ARORA
R/O FIRST FLOOR, FRONT PORTION
22, PASCHIMI MARG,



VASANT VIHAR
NEW DELHI -110057
AND ALSO AT
6615,NORTH MILE LANE,
PEORIA, ILLINOIS
USA-61614

3. **SHRI. JOGINDER MOHAN**
S/O LATE SHRI RAM LAL
R/O GROUND FLOOR, (REAR PORTION)
22, PASCHIM MARG, VASANT VIHAR,
NEW DELHI-110057
4. **SHRI. DEVENDRA MOHAN**
S/O LATE SHRI RAM LAL
R/O GROUND FLOOR, (FRONT PORTION)
22, PASCHIM MARG, VASANT VIHAR,
NEW DELHI-110057

...RESPONDENTS

*(Through: Mr. B. K. Sood, Mr. Harish Gaur, Advs for R-2(ii).
Mr. Aditya Wadhwa and Ms. Ragini Kapoor, Advocates for LR's of R-2(iii)
Mr. J.R. Mathur, Advocate for R-3..)*

% Reserved on: 21.07.2025
Pronounced on: 08.08.2025

JUDGMENT

Preface

The instant case is a contested testamentary petition, where the petitioner seeks grant of probate of the Will dated 12.06.2000 with respect to the estate left behind by his father late Shri Ram Lal. On one side stands the petitioner's assertion that the Will bears the imprimatur with due execution and legal validity, and on the other side stand respondent Nos. 2 to 4, who



denounce the Will as a product of fabrication, steeped in grave suspicion and riddled with undue influence.

2. At the very outset, learned counsel for the petitioner submitted that although the petition has been titled as one seeking probate of the Will, it ought to have been instituted for the issuance of Letters of Administration (hereinafter referred to as “LoA”), since the named executor, Dr. R.S. Chaudhary, had expressed his inability to act due to his ill health and had subsequently passed away in December, 2007.

3. Upon consideration, the Court deemed it appropriate to examine the scope of Section 276(1) of the Indian Succession Act, 1925 (hereinafter referred to as “Succession Act”), which governs the petitions both for probate and LoA. The said provision, by any prudent stretch of reading, does not create a rigid distinction between the two forms of relief and instead, provides a common procedural foundation for both. As a sequitur, the petition, which has been mischaracterised as one for probate—when the factual circumstances warranted a claim for LoA—should not be dismissed solely on the ground of incorrect nomenclature, more so when the same has been pending since the year 2005.

4. On this aspect, it is beneficial to refer to the decision of the Bombay High Court in the case of *Shirin Boman Faramarzi v. Zubin Boman Faramarzi*¹, whereby, while referring to the decision of the Supreme Court in *Shambhu Prasad Agarwal v. Bhola Ram Agarwal*² the High Court has held as under:-

¹2013 SCC OnLine Bom 1267

²(2000) 9 SCC 714



“18. On perusal of the record produced by parties, in my view both the executors who were alleged to have been appointed by the said deceased in the Will in question have not come forward to act as an executors. Though this Court had passed an order impleading the executors with a view to ascertain whether any of those executors who would act as executor or would renounce the executorship, as far as Mr. Himanshu Kode is concerned, he neither appeared before this Court nor filed any affidavit in reply. There was no response given by Mr. Himanshu Kode to any of the letters addressed by the petitioner. As far as Mr. Diniar Mehta is concerned, he made a statement through his counsel that he did not want to act as an executor in respect of the Will in the form as annexed or produced with the petition by the petitioner. Since Mr. Himanshu Kode has not come forward to act as an executor though served with notice and proceedings and since Mr. Diniar Mehta has refused to act as an executor in respect of the Will in the form in which it is produced by the petitioner, in my view in this situation, the beneficiary would have been entitled to file a petition for Letters of Administration with Will annexed. **It is the case of the petitioner that since none of the executors had come forward to act as executors and in view of the erstwhile advocate filing a petition for probate instead of filing petition for Letters of Administration, petitioner had filed such proceedings. In my view, no prejudice would be caused to the caveator if the petition filed for probate is allowed to be converted into the petition for Letters of Administration in the circumstances referred to above.**

19. Supreme Court in case of Shambhu Prasad Agarwal has considered a similar situation and has held that the petitioner in that case who had filed a petition for probate instead of filing petition for letters of administration would not be debarred to get the petition for probate amended. The petitioner in that case was a legatee and not an executor under the Will. It is held that the legal heirs could file a petition for issuance of letters of Administration even on the demise of the original petitioner and in the interest of justice proceedings would not come to an end and the appeal would not be dismissed merely on technical ground. I am respectfully bound by the judgment of the Supreme Court in case of Shambhu Prasad Agarwal (supra). In my view, the judgment of Supreme Court in case of Shambhu Prasad Agarwal (supra) squarely apply to the facts of this case.

20. In the facts of this case, it is clear that the petitioner who claims to be the sole beneficiary under the Will in question is 69



years old. On filing of the caveat and affidavit in support by the caveator, petition for probate has been already converted into a suit. Whether Will propounded by the petitioner was executed or not or validly attested or not would be an issue which would be tried at the time of trial of the petition. **Merely because a probate petition is allowed to be converted into a petition for Letters of Administration with Will annexed, it would not prove the existence and/or execution of the Will in question.** The caveator who has disputed the Will would be entitled to treat the caveat as well as affidavit in support of the caveat filed as caveat and affidavit in support in the petition for Letters of Administration with the Will annexed.”

5. Regard may also be made to the decision of this Court in the case of *Preethi Swaminathan v. State (NCT of Delhi)*³, wherein, while allowing the oral prayer of the petitioner to convert the probate petition into the one seeking LoA, this Court has held as under:-

“9. Having heard learned counsel for the parties, this Court is of the view that in the present case since respondent no. 4-Executor had refused to act, the petitioner, who is one of the legatees is entitled to maintain a petition for letters of administration with Will annexed.

10. The Supreme Court in *Vatsala Srinivasan v. Shyamala Raghunathan*, (2016) 13 SCC 253 has held that, **probate and letters of administration proceedings are similar in nature. It has further been held that the essence of both the proceedings is the same and they relate to ascertainment of genuineness and authenticity of the Will.** It was also held, following a decision of the Gujarat High Court in *Jadeja PravinsinhjiAnandsinhji v. Jadeja MangalsinhjiShivsinhji*, 1961 SCC OnLine Guj 62, that if the executor fails in his duty, any of those whom he represents are entitled to intervene and carry on the proceedings with a “formal modification” that the prayer be read for letters of administration with the Will annexed.

³ 2018 SCC OnLine Del 9949



13. Consequently, the oral prayer of learned counsel for the petitioner is allowed and the present petition is directed to be converted into letters of administration with Will annexed, as the executor had refused to act. This Court may mention that its approach is in consonance with Sections 229 and 230 read with Section 232 of Act, 1925.....”

6. In fact, it is trite that, as far as possible, a substantive right should not be allowed to be defeated on account of a procedural defect which is curable. Procedural irregularities which do not strike at the root of the matter should not be permitted to frustrate a just cause. The Code of Civil Procedure, 1908 bestows sufficient power in the hands of the Court to ensure that injustice is not done to any party who has a legitimate case. (See: *United Bank of India v. Naresh Kumar & Ors*⁴ and *Preethi Swaminathan v. Govt. of NCT of Delhi & Ors.*⁵).

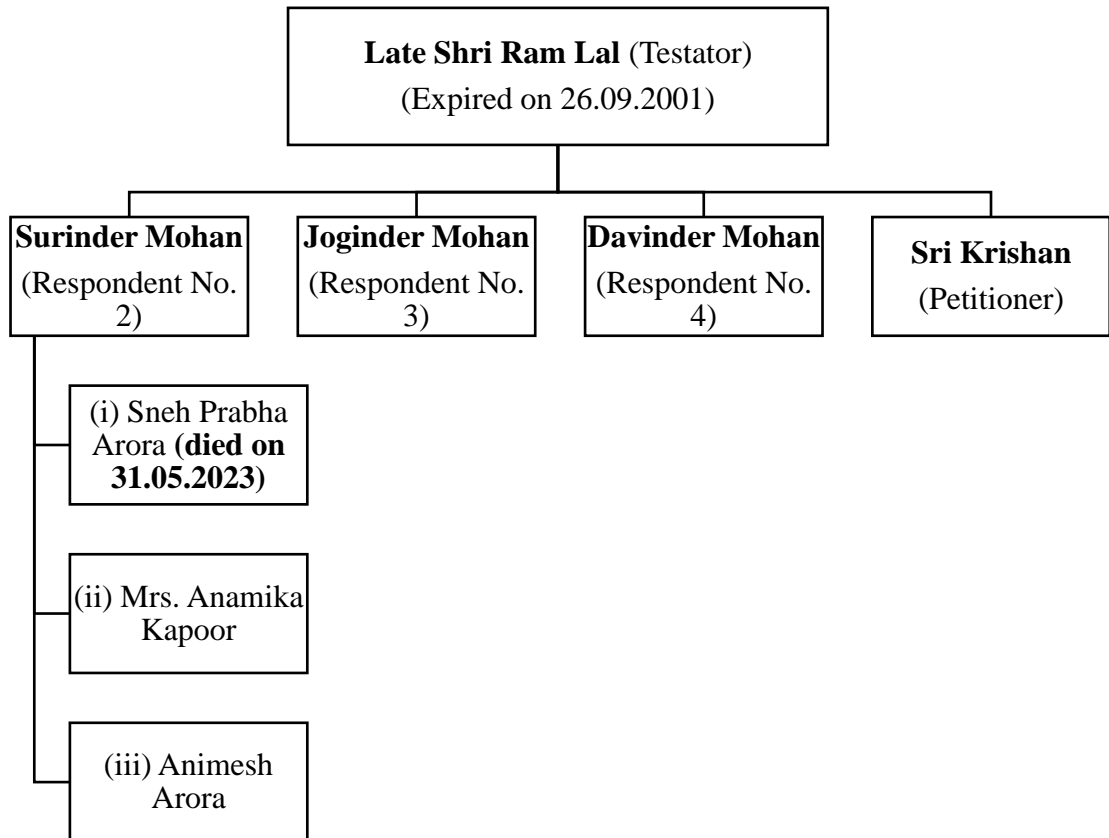
7. Accordingly, in the interest of justice and in view of the judicial precedents cited above, it is apposite to treat the instant petition as one seeking issuance of LoA with the Will annexed.

BRIEF FACTS

8. The facts of the case would indicate that late Shri Ram Lal, the Testator, died on 26.09.2001. He was survived by his four sons. The pedigree of late Shri Ram Lal (Testator), is set out as follows:-

⁴ (1996) 6 SCC 660

⁵ 2018 SCC OnLine Del 9949



9. The petitioner is one of the sons of late Shri Ram Lal, who was a permanent resident of Property No. 22, Paschimi Marg, Vasant Vihar, New Delhi (hereinafter referred to as “**the subject property**”). At the time of his death, late Shri Ram Lal was the exclusive owner of the subject property. It is stated that he left behind a duly executed Will dated 12.06.2000, witnessed by two persons, namely Mr. Ashok Kumar Goel and Mr. Suman Nayyar. In the said Will, Dr. R.S. Chaudhary was appointed as the Executor.

10. It is stated that by way of the said Will, late Shri Ram Lal had desired that the subject property be bequeathed in the manner stipulated in the Will, where the petitioner is one of the beneficiaries. The wife of late Shri Ram Lal had already pre-deceased him on 18.11.1988.



11. On 05.10.2005 i.e., around four years after the demise of late Shri Ram Lal, it is stated that the petitioner approached Dr. R.S. Chaudhary requesting him to fulfil his obligations as Executor by signing and filing the probate petition relating to the Will of late Shri Ram Lal. However, Dr. R.S. Chaudhary expressed his inability to conduct the aforesaid exercise citing health issues and the same was communicated to the petitioner *vide* response letter dated 07.10.2005.

12. Consequently, the petitioner, being one of the beneficiaries under the Will and upon refusal of the Executor, filed the present petition seeking grant of probate. The respondent Nos. 2 to 4, while contesting the Will, filed their objections, *inter alia* alleging that the Will was fabricated and the Testator was of unsound mind at the time of execution, besides suffering with old age, cataract, and dependent on regular blood transfusions.

13. Based on the pleadings, the following issues were framed on 19.02.2007:-

- *“Whether the petition is liable to be rejected for non-compliance of Section 281 of the Indian Succession Act? – OPD-1*
- *Whether the petition is barred by limitation and liable to be dismissed on the ground of laches, acquiescence and waiver? – OPD-1*
- *Whether Shri Ram Lal left behind any validly executed last Will dated 12.06.2000? – OPP*



- *Whether the document dated 12.06.2000 bequeaths any property or can be termed as a Will? – OPD-2*
- *Relief”*

14. However, issue nos. 1 and 4 were decided as preliminary issues in favour of the petitioner *vide* order dated 15.03.2007. In the said order, the Court also framed the following additional issue:

- *“Whether Sh. R.S. Chaudhary, executor of the purported Will as refused to present the petition and therefore, the petition filed by the petitioner is maintainable? OPP”*

15. Being aggrieved by the findings in the order dated 15.03.2007, respondent No.4 preferred an appeal being FAO (OS) No. 301/2007. However, the same was dismissed on 14.08.2007 and the order dated 15.03.2007 was upheld by the Division Bench of this Court.

16. In evidence, the petitioner appeared as PW-1 and examined attesting witnesses PW-2 Mr. Ashok Kumar Goel and PW-3 Mr. Suman Nayyar, both of them deposed in support of the execution of the Will. Several documents were exhibited, while others were marked for identification.

17. Respondent No. 2, Surinder Mohan Arora, filed an affidavit and was partly cross-examined before suffering a stroke. Respondent Nos. 3 and 4 also deposed and produced documents supporting their respective stands.

SUBMISSIONS ON BEHALF OF THE PETITIONER

18. Mr. Sanjeev Mahajan, learned counsel appearing on behalf of the petitioner submitted as follows:



18.1 The Will dated 12.06.2000 was validly executed and duly attested in accordance with law. Both attesting witnesses PW-2 Mr. Ashok Kumar Goel and PW-3 Mr. Suman Nayyar testified that they witnessed the Testator, late Shri Ram Lal, sign each page of the Will, write his name and particulars, and then sign in their presence. Mr. Goel signed the Will after the Testator, and Mr. Nayyar signed thereafter, completing the formal requirements under the Succession Act.

18.2 The execution of the Will stands duly proved through their unimpeached testimonies. Further, respondent No. 3, Shri Joginder Mohan Arora, has admitted the signature of late Shri Ram Lal on the last page of the Will as well as the signature of Mr. Ashok Kumar Goel. His only assertion, that Mr. Nayyar signed subsequently, remains unsubstantiated and is contradicted by the consistent and corroborated testimonies of the attesting witnesses.

18.3 On the issue of the Testator's mental and physical condition, he emphasized that there is no evidence on record to support the respondents' allegations that late Shri Ram Lal was unfit to execute a Will. In fact, the evidence is to the contrary. The Testator was suffering from bone marrow depression, which necessitated regular blood transfusions, but this condition did not impair his mental soundness. Respondent No. 4 initially claimed that the Testator was unable to see properly; however, during cross-examination on 31.01.2009, he admitted that the Testator could see properly post-cataract surgery.



18.4 While relying on the decision of this Court in *Rajesh Sharma v. Krishan Kumar Sharma*⁶, he contended that physical illness alone does not amount to mental incapacity, and thus does not invalidate a Will.

18.5 Further, substantiating the Testator's competence, Ex. PW-1/15 would show that late Shri Ram Lal executed a conveyance deed himself and appeared before the Sub-Registrar. This act reinforces his ability to understand legal processes and indicates that he was of sound mind.

18.6 There are no suspicious circumstances surrounding the execution of the Will. The respondents have failed to produce any credible evidence in support of their allegations of forgery or undue influence. Despite furnishing a list of ten main witnesses and official witnesses, only one individual, Ravi Malhotra, was produced by respondent No. 2, and his testimony does not support their case.

18.7 The Will contains clear and reasoned exclusion of respondent Nos. 2 to 4. It records that due to strained relationships and lack of financial or emotional support, late Shri Ram Lal consciously decided to exclude them. He did, however, provide for reimbursement of partial construction costs (after deducting House Rent Allowance received) only to respondents No. 2 and 3.

18.8 The notes and writings of Shri Ram Lal—admitted by respondent No. 4—reveal his clear intentions and form a contemporaneous record of his decision-making. These documents, marked as Exhibits PW-1/14, PW-1/22, PW-1/23, PW-1/25, PW-1/26 and PW-1/29, reinforce the rationale behind the distribution of his estate.

⁶FAO 641/2002



18.9 The Testator was denied the right to occupy his own house. Respondent Nos. 2 and 4 took possession of the subject property without informing him around 1992–93. Despite earning House Rent Allowance and residing in his property, they neither offered to contribute to property tax nor spent any money on the welfare of late Shri Ram Lal or his wife. As a result of this conduct, late Shri Ram Lal had to leave his own house and stay with the petitioner in Bokaro, which further demonstrates the neglect and disinterest shown by respondent Nos. 2 to 4.

18.10 The delay in seeking probate was explained on the ground that Dr. R.S. Chaudhary, the named executor, did not file for probate due to ill health and subsequently passed away in December 2007, making the present LoA petition necessary.

18.11 On the question of limitation, it was submitted that while no specific period of limitation applies to such petitions, Article 137 of the Limitation Act, 1963 (“*Limitation Act*”) prescribes a three-year period from when the right to apply accrues. The cause of action arose on 18.08.2004, when the respondents disputed the Will, and the petition, filed on 18.10.2005, falls well within the prescribed limitation.

18.12 The letter dated 01.10.2001 written by the petitioner to the MCD would show that the Will was propounded immediately after the demise of the Testator. In the said letter, copy of the Will as well as the death certificate issued by the Hospital was enclosed.

18.13 The allegation of irregularity of page numbers, font and spacing in the Will does not hold any ground, inasmuch as, the Will was prepared by the typewriter, probably over a period of days. The document made by



the typewriter is distinct from the one prepared with the help of computer as the latter maintains uniformity unlike the former.

18.14 The credibility of the petitioner's witnesses cannot be undermined merely due to their association with the Testator. Learned counsel drew the attention of the Court to the decisions in *Madhukar D. Shende v. Tarabai Aba Shedage*⁷, *Budh Singh v. Raghubir Singh*⁸, and *P. Subramanian v. Ramachandran*⁹, to submit that familial relationships do not, by themselves, taint credibility when the testimony is otherwise consistent.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

19. On the contrary, Mr. B. K. Sood, learned counsel for respondent No.2(ii) has advanced the following submissions:

19.1 The present petition for grant of probate is barred by limitation and is liable to be dismissed at the threshold. The purported Will sought to be probated is dated 12.06.2000, while the Testator, late Shri Ram Lal, passed away on 26.09.2001. However, the petition seeking probate was filed only on 24.10.2005, which is much beyond the statutory period of limitation prescribed under Article 137 of the Limitation Act.

19.2 The right to apply for probate accrues when the petitioner first acts upon the Will or asserts a right under it. In the instant case, the petitioner wrote to the Municipal Corporation of Delhi on 01.10.2001,

⁷(2002) 2 SCC 85

⁸2015 SCC OnLine Del 14528

⁹1995 SCC OnLine Ker 171



seeking mutation of property based on the said Will and annexed a copy of the death certificate, which was issued only on 05.10.2001. This discrepancy strongly suggests that the letter was either fabricated or backdated, thus involving a deliberate act of misrepresentation. Therefore, the right to apply accrued in 2001 itself, making the petition filed in 2005 *ex facie* barred by limitation.

19.3 The petitioner has neither filed any application seeking condonation of delay nor offered any cogent explanation for the lapse of more than four years. The conduct of the petitioner clearly reflects that he was fully aware of the Will's contested nature since the beginning. The petitioner himself admits to discussing the Will with his brothers multiple times between 2002 and 2005 but failed to provide them a copy of the same despite repeated requests. These discussions not only reflect the knowledge of the Will but also confirm the existence of disputes among the heirs during the said period, which triggered the limitation.

19.4 The alleged Will dated 12.06.2000 is shrouded in suspicious circumstances and has not been validly proved in accordance with the Succession Act. The petitioner, being the sole beneficiary, had a dominant role in the execution and has failed to discharge the heavy burden of proving the genuineness and due execution of the Will, especially given the unnatural exclusion of all other heirs.

19.5 The attesting witnesses to the Will were not familiar with the Testator but were closely associated with the petitioner, thereby raising questions about their impartiality. Their testimonies suffer from internal



contradictions concerning the date, place, and manner of execution, which seriously undermine the credibility of the alleged Will.

19.6 The factum of the death of Dr. R.S. Chaudhary, the executor named in the Will, was brought to the notice for the first time only in the written submissions filed by the petitioner and no document is placed on record to that effect.

19.7 There is an unexplained absence of any contemporaneous documentation or communication that would affirm the existence or acknowledgment of the Will during the Testator's lifetime or immediately after his death. The petitioner has also failed to produce any such records, even though he claims to have been in possession of the Will for several years prior to initiating the probate proceedings.

19.8 The language of the Will indicates strained family relationships, yet no independent evidence has been presented to substantiate such claims. On the contrary, credible material shows that the Testator maintained cordial relations with all family members, thereby rendering the purported disinheritance unnatural and suspicious.

19.9 The advanced age and deteriorating health of the Testator at the time of the Will's execution severely compromised his testamentary capacity. The Testator was 89 years old and suffering from significant health issues. Despite claiming to have access to medical records, the petitioner has not produced any evidence demonstrating that the Testator was of sound and disposing mind at the relevant time. The Testator had no sound disposition of mind as admittedly he was suffering from Bone Marrow depression (MDS) requiring blood transfusion regularly, cataract,



was not able to see, read and write except in bold letter, suffering from Terminal Leukemia and Dementia. There is no satisfactory explanation or clarification by the petitioner on all these aspects.

19.10 The Will was not registered, although the Testator registered a conveyance deed two months later. The decision not to register the Will, despite its crucial importance and the registration of other documents during the same period, adds another layer of suspicion regarding its authenticity.

19.11 The Executor's non-appearance in the proceedings and his stated lack of knowledge about the Will until shortly before the filing of the probate petition further reinforce the conclusion that the Will was not acted upon contemporaneously. The attesting witnesses' inconsistencies and their evident bias towards the petitioner makes their testimonies wholly unreliable.

19.12 The complete exclusion of the Testator's other children without any credible explanation is not only unnatural but indicative of undue influence. The overall tenor of the Will, coupled with the petitioner's dominant position, suggests coercion and manipulation in its execution.

19.13 The document being alleged Will, having been written in a very haphazard manner with different pagination, blank spaces and no continuity, raises a cloud of suspicion and demonstrates that the Will was forged. More so, the said Will was never communicated by the petitioner to any of the brothers or family members.

19.14 In the cross examination, it has been admitted that the Testator and his wife had cordial relations with all of their children, thereby, no



reason is forthcoming as to why all other legal heirs have been deprived of any bequest. The said contention is bolstered by the fact that all the natural children had executed relinquishment deed in favour of Testator for enabling him to get the plans for first floor sanctioned, which portions were constructed by respondent nos. 2 and 4 out of their own funds.

19.15 The fact that the petitioner did not disclose the existence of the purported Will when he found it in 2001, is contrary to natural human conduct and creates doubt over the veracity of the purported Will.

19.16 In light of the above, the Will is riddled with suspicious circumstances, and the petitioner has failed to remove those suspicions or prove due execution as mandated under law. Reliance is placed on the judgments of the Supreme Court in *H. Venkatachala Iyengar v. B.N. Thimmajamma*¹⁰, and *Janki Narayan Bhoir v. Narayan Namdeo Kadam*¹¹, wherein it was held that mere proof of signature is not sufficient and that all suspicious circumstances must be fully dispelled before a Will can be accepted as valid.

19.17 He, therefore, concluded that the Will has not been duly proved, the petition is hopelessly barred by limitation, and the conduct of the petitioner points to a calculated suppression of material facts. The petition, therefore, deserves to be dismissed in *limine*.

20. Mr. Aditya Wadhwa, learned counsel for respondent No. 2(ii), Mr. J.R. Mathur, learned counsel for respondent No. 3 and Ms. Maldeep Sidhu,

¹⁰AIR 1959 SC 443

¹¹(2003) 2 SCC 91



learned counsel for respondent No. 4, while adopting the aforesaid submissions, additionally submitted as under:

20.1 Since the *status quo* of the subject property was in direct challenge to the effect of the purported Will right from the date of death of the Testator i.e., 26.09.2001, it was necessary for the petitioner to have applied for a probate immediately at that time.

20.2 The Executor ought to have, at the very least, been called as a witness to attest to his relationship with the Testator and his knowledge of the purported Will. Curiously, despite the inclusion of the Executor's name in the list of witnesses on behalf of the petitioner, he was not examined.

20.3 The petitioner had taken a prominent part in the execution of the will to the exclusion of the other family members of the Testator, which is a strong ground for inferring suspicious circumstances, as has been held by the Division Bench of this Court in ***Raj Bala v. State & Ors.***¹²

20.4 There are no particulars in the Will to demonstrate how the balance sale proceeds are to be utilized, despite the Testator having specifically directed the utilization thereof. This suggests that the Testator had specific intentions for how the proceeds should be utilized, as opposed to just being handed over to the petitioner, and that this portion of the Will has been removed. Therefore, the said Will is uncertain in material particulars and is void under Section 89 of the Succession Act.

¹²MANU/DE/1789/2024



20.5 The narration in a Will should be supported by independently corroborated evidence. The petitioner has not provided any evidence supporting the narration of events provided in the Will, most of which is made up and bogus. In fact, no evidence has been led as to who drafted the Will.

20.6 The attesting witnesses allegedly only added their signatures on the last page of the purported Will, but did not read the contents thereof. Since they failed to attest the contents of the purported Will, it becomes invalid in light of the decision of this Court in *Neeraj Katyal v. State*¹³.

20.7 It was submitted on behalf of respondent No. 3 that the Will propounded in the Court is not the same Will with which the Testator went to the house of Mr. Ashok Kumar Aggarwal, one of the attesting witnesses on 12.06.2000, along with respondent No. 2, Joginder Mohan and the petitioner. The said Will ran into seven (7) pages only. Both the attesting witnesses had stated that the Testator did not give page numbers while signing the Will on each page, and there are other contradictions as well in the testimony of both the attesting witnesses. For instance, PW 2, during cross examination, firstly stated that PW-3 was his friend and signed in his presence but later he stated that they were not friends.

Analysis

21. I have heard the learned counsel appearing on behalf of the parties and perused the record.

¹³MANU/DE/0435/2016



22. The issues which fall for consideration of this Court and which shall be decided by the present judgment are enumerated as below-

- I. Whether the petition is barred by limitation and liable to be dismissed on the ground of laches, acquiescence and waiver? – OPD-1
- II. Whether Shri Ram Lal left behind any validly executed last Will dated 12.06.2000? – OPP
- III. Whether Sh. R.S. Chaudhary, Executor of the purported Will has refused to present the petition and therefore, the petition filed by the petitioner is maintainable? OPP
- IV. Relief

Issue No. I

23. It has been strenuously argued by respondent Nos. 2 to 4 that the present petition is barred by limitation and the same is liable to be dismissed on the grounds of laches, acquiescence and waiver. Though the Succession Act does not prescribe any specific period of limitation for filing a petition seeking probate of a Will, however, it has been conspicuously settled through judicial precedents that the limitation in such cases is governed by Article 137 of the Limitation Act. Undisputedly, the said Article takes in its sweep a petition seeking probate of a Will. As per this provision, a residual limitation period of three years is envisaged, which commences from the date when the right to apply for probate first accrues, as has been settled by



the Supreme Court in the case of *Kunvarjeet Singh Khandpur v. Kirandeep Kaur and Others*¹⁴.

24. Thus, what needs to be determined at the threshold is the date when the right to apply for probate first accrued in favour of the petitioner. It would be appropriate to lend credence to the decision of this Court in *Amit & Ors. v. State of NCT of Delhi & Ors.*¹⁵, wherein, it was held that the need to file the probate petition i.e., the cause of action to file the probate petition arises when the subject Will is specifically denied by the objectors to the notice/knowledge of the appellants/petitioners or their predecessor-in-interest. The Court further highlighted that it is only upon the denial of the validity etc. of the subject Will, as brought to the knowledge of the person seeking probate, that the limitation would begin for filing of the probate petition.

25. It is equally pertinent to refer to the decision of the Division Bench of this Court in *Anupam Mullick v. Raj Mullick*¹⁶, which maintains the position that non-filing of a probate petition by a legatee/executor for the recognition of the right which has already vested in the legatee, would not result in the said right getting destroyed on the ground of limitation. The relevant paragraph of the said decision reads as under:-

“13. It is well-settled legal position that succession opens immediately upon the death of the person, and the rights in the property held by the deceased- whether he/she dies intestate, or after making a will, devolve upon the heirs/legatees immediately upon the occurrence of the

¹⁴(2008) 8 SCC 463

¹⁵ FAO No. 402/2015

¹⁶ 2021 SCC OnLine Del 3544



death of the person. Devolution of rights takes place by operation of law, and is not dependent on any act of any person-whether the heir/beneficiary, or the executor of the will-if there is one left by the deceased. If the plea of Mr. Sharma were to be accepted, it would mean that non-filing of a probate petition by a legatee/executor for the recognition of the right which has already vested in the legatee, would result in the said right getting destroyed on the ground of limitation, despite the estate having already vested in the legatee. In our view, this position cannot be accepted, and it is precisely for this reason that the Supreme Court affirmed the decision of the Bombay High Court, that an application to seek Letters of Administration in respect of a will is only to seek the Court's permission to perform a legal duty created by a will, or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as its right to do so survives, and the object of the trust exists or any part of the trust if created, remains to be executed. No doubt, where such an application is moved beyond a period of three years after the death of the testator, the said delay may arouse suspicion and greater the delay, greater would be the suspicion, but the mere delay in approaching the Court cannot be treated as an absolute bar on limitation. The decisions relied upon by Mr.Sharma do not appear to have noticed these aspects, including the ratio of the Supreme Court decisions in Kunvarjeet Singh Khandpur (supra) and Krishan Kumar Sharma (supra).”

26. In the present matter, it is the contesting respondents' case that the right to apply for probate had accrued when the petitioner wrote a letter to the Municipal Corporation of Delhi on 01.10.2001 (Ex. PW 1/18) seeking mutation of property based on the Will in question. Another contention raised by the contesting respondents on this aspect is that since they were not only occupying their respective portions in the subject property but also



paying house tax and as such, they were projecting their ownership *in rem*, the same was sufficient cause for the petitioner to apply for grant of probate immediately after the Will came into his knowledge.

27. However, a careful examination of the assertions made by the contesting respondents, when evaluated alongside the judicial precedents discussed above, would manifest that none of these claims allude to a relevant date from which the right to apply for probate could be said to have accrued. For any date to trigger the clock of limitation, it must be shown that the subject Will was expressly denied by the contesting respondents to the notice/knowledge of the petitioner. However, any such express denial is conspicuously missing from the evidence led by the respondents. Rather, the events sought to be highlighted by respondent nos. 2 to 4 to suggest commencement of the limitation period bear no relevance to the legal requirements necessary to establish the accrual of the cause of action to initiate probate proceedings. To curtail a vested right such as the one involved in the present case on the ground of limitation certainly requires a higher threshold and the conditions necessary for such curtailment must be satisfied in strict terms. There is no scope for liberal construction of circumstances or for indulging in an uncertain inferential exercise in such cases. The denial and knowledge thereof must be proved in no uncertain terms.

28. In the absence of any such repudiation, the only definitive act or conduct denying the Will in a manner that was brought to the petitioner's knowledge is the legal notice dated 18.08.2004 (Ex. RW 1/10). It is only in this notice, issued on behalf of one of the contesting respondents, that it was



asserted for the first time that late Shri Ram Lal had died intestate and a claim for partition was advanced. Thus, the effect of the Will was denied and communicated for the first time in the said legal notice. It emerges from the cross-examination of the petitioner that during the interregnum period i.e., between 2002 to 2005, the petitioner had been engaged in talks with the contesting respondents, in an attempt to amicably settle the issue.

29. As already mentioned above, only few days after the demise of the Testator, the petitioner sent letter dated 01.10.2001 to the MCD notifying it about the Testator's death. This immediate administrative step negates the claim that the petitioner sat on his rights or allowed time to lapse without action. Thus, there does not appear to be any delay of such nature that could invoke the doctrine of laches. Likewise, the concepts of waiver and acquiescence are also not attracted in the facts and circumstances of the present case. Waiver requires a voluntary and intentional surrender of a legal right, which is clearly absent. The record would reflect that the petitioner never renounced his entitlement under the Will.

30. In conclusion, the record establishes that the instant petition has been filed well within the limitation period prescribed under Article 137 of the Limitation Act,. The contesting respondents have failed to produce any cogent evidence reflecting intentional delay or any abandonment of rights by the petitioner which could frustrate the statutory limitation period. Furthermore, the respondents have failed to discharge their evidentiary burden in the instant issue as they could not bring any cogent evidence on record to prove the denial of Will on their behalf and knowledge thereof to the petitioner at any time prior to the legal notice, as mentioned above.



Hence, the objection raised under issue No. I lacks merit and is decided in favour of the petitioner and against the contesting respondents.

Issue No. II

31. Having decided issue No. I in favour of the petitioner to the extent that the instant petition is not barred by limitation, the Court shall now proceed to determine the next issue which would answer as to whether late Shri Ram Lal had left behind any validly executed last Will dated 12.06.2000.

32. However, before delving into the law relating to Will and examining the merits of the case at hand, it is expedient to clarify the limited scope of inquiry before the probate Court. The jurisdiction of probate Court is confined to determining the question as to whether the document put forward as the last Will and testament of the deceased was duly executed and attested in accordance with law. In addition to the above, the Court has to assess whether, at the time of execution, the Testator had sound disposing mind. However, the question whether a particular bequest is good or bad is not within the purview of the probate Court. Put differently, a probate Court in the proceedings before it, only has to determine the genuineness and due execution of the Will and to preserve the original Will in its custody. The contents of the Will pertaining to the respective shares of the heirs and manner of bequest are not the facts in issue before a probate Court, however, they may be relevant for determining the element of suspicion with respect to a Will sought to be proved, as discussed below.



33. The principles regarding the nature of proof required to prove a Will have been succinctly elucidated by the Supreme Court in the case of *Shiva Kumar v. Sharanabasappa*¹⁷. The relevant excerpt thereof reads as under:

“12. For what has been noticed hereinabove, the relevant principles governing the adjudicatory process concerning proof of a will could be broadly summarised as follows:

12.1. Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of will too, the proof with mathematical accuracy is not to be insisted upon.

12.2. Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

12.3. The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.

12.4. The case in which the execution of the will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

12.5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

¹⁷ (2021) 11 SCC 277



12.6. A circumstance is “suspicious” when it is not normal or is “not normally expected in a normal situation or is not expected of a normal person”. As put by this Court, the suspicious features must be “real, germane and valid” and not merely the “fantasy of the doubting mind”.

12.7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances abovenoted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will?

12.9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the will”

34. Furthermore, while relying on a series of its earlier decisions, the Supreme Court in the case of *Meena Pradhan v. Kamla Pradhan*¹⁸, has summarized the following principles required for proving the validity and execution of the Will:-

“10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;

¹⁸ (2023) 9 SCC 734



10.2. *It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.*

10.4. *For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;*

10.5. *The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;*

10.6. *If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;*

10.7. *Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;*

10.8. *Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.*

10.9. *The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;*

10.10. *One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.*

10.11. *Suspicious circumstances must be "real, germane and valid" and not merely "the fantasy of the doubting mind [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277] ". Whether a particular feature would qualify as "suspicious" would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc."*



35. The aforesaid principles would be fundamental in determining the validity and due execution of the Will dated 12.06.2000, which has been propounded by the petitioner. As per the settled jurisprudence, it is for the propounder to show that (i) the Will was signed by the Testator; (ii) that the Testator was in sound disposing state of mind at the relevant time; (iii) that he understood the nature and effect of the deposition; (iv) that he put his signatures to the testament on his own free will and signed the testament in the presence of two attesting witnesses who attested the Will in the presence of the Testator and in presence of other attesting witnesses. The onus of the propounder is discharged, once these elements are established. However, in case where it is alleged that the Will is shrouded by some suspicious circumstances, the onus on the propounder of the Will becomes heavier as he has to remove the suspicion hovering over the Will. It was held in *Meenakshiammal (dead) through LRS. v. Chandrasekaran*¹⁹, that suspicious circumstance cannot be defined precisely, nor enumerated exhaustively and must depend on the facts of each case. Having said that, it needs to be noted that in a case wherein undue influence, fraud, forgery etc. is alleged, it falls upon the person alleging the same to prove it on the basis of cogent evidence. Thus, there is distinction in terms of the evidentiary burden to be discharged by the parties in a probate case. Whereas, the burden to dispel the suspicious circumstances concerning the Will is to be discharged by the propounder of the Will; however, the burden to prove the judicially determinable elements of undue influence, fraud, forgery etc. *qua* the Will in question falls upon the person who alleges the same.

¹⁹ (2005) 1 SCC 280



36. The due execution of Will ought to be in compliance of Section 63 of the Succession Act, which mandates that a Will must be signed by the Testator and attested by at least two witnesses, each of whom must have seen the Testator sign and must themselves sign in the Testator's presence. Section 68 of the Indian Evidence Act, 1872 further requires that at least one attesting witness must be examined to prove the execution. In the present case, both attesting witnesses PW-2, Mr. Ashok Kumar Goel, and PW-3, Mr. Suman Nayyar have deposed unequivocally that the Will was signed by Shri Ram Lal in their joint presence, and that each signed it thereafter, also in each other's and the Testator's presence.

37. PW-2, Mr. Ashok Kumar Goel, testified that the Testator visited his residence on 12.06.2000 along with PW-3. He confirmed that late Shri Ram Lal signed the Will in his presence, after which PW-2 and then PW-3 attested it. The attestation by the attesting witnesses also took place in the presence of the Testator. In cross-examination, PW-2 remained unshaken and consistently affirmed that the Testator appeared mentally sound and physically well at the time of execution. He rejected all suggestions that the Will was fabricated or improperly witnessed.

38. PW-3, Mr. Suman Nayyar, corroborated the entire sequence of events. He confirmed his presence at the time of execution, verified the signatures, and affirmed that the Testator was alert, coherent, and in full possession of his faculties. The consistency in their accounts, and the absence of contradictions during cross-examination, lends significant weight to their testimonies and eliminates any suggestion of coercion or irregularity. Even if the argument of the contesting respondents is accepted on the face of it,



that PW-3 signed later, suffice to note that in terms of the decision of this Court in *Balbir Sher Gill v. State of Delhi & Ors.*²⁰, it is not necessary for both the attesting witnesses to be present at the same time.

39. Further, the validity of the Will dated 12.06.2000 has been challenged on the grounds that the Testator, late Shri Ram Lal, was of unsound mind at the time of execution and that the Will is fabricated and unnatural. However, before considering the credibility of these allegations, it is necessary to go through the recitals of the Will itself, particularly the reasoning recorded by the Testator for making a substantial part of bequest in favour of his youngest son, the petitioner. The Will, spanning multiple pages, is exhibited as Ex. PW-2/1 and does not appear to be a perfunctory document. It meticulously adumbrates the deteriorated familial relations and specific incidents that compelled the Testator for a disproportionate division amongst his sons. These contemporaneously recorded statements are essential for evaluating whether the Will was executed voluntarily and without undue influence or under suspicious circumstances.

40. From pages 5 to 13 of the Will, late Shri Ram Lal explains in detail the reasons for disinheriting his three elder sons. He records that after the passing away of his wife, although all three elder sons resided in Delhi, none offered him a place to live. In contrast, the petitioner, despite having the most family obligations, took him to Bokaro and cared for him. While the Testator was away, respondents No. 2 and 4 occupied the subject property without permission and later refused to vacate, even after being repeatedly asked to do so. The Will narrates a series of deeply personal

²⁰ 2019:DHC:3232



grievances financial neglect, disrespectful behaviour by daughters-in-law, and a physical altercation among the sons that left one injured. A particularly distressing incident involved respondent No. 2's wife, who demanded the return of Rs. 1000/- within three days towards payment for a CT scan for the Testator's ailing wife. The Will describes the emotional trauma caused by such incidents and states unambiguously that the Testator was denied the basic dignity of residing in his own self-acquired home. The decision to bequeath the property substantially to the petitioner unequivocally appears to be a well-considered response to years of neglect, rather than an impulsive or suspicious act.

41. The contesting respondents' claim that these reasons are unsubstantiated lacks merit, as handwritten contemporaneous notes of the testator (Exhibits PW-1/22, PW-1/23, PW-1/24, PW-1/25, PW-1/26 and PW-1/29) independently support the narrative provided in the Will. There is no cross examination in respect of these handwritten notes by the contesting respondents. Rather, respondent No. 4 in his cross examination affirms that the said notes are in the handwriting of the Testator. Thus, the respondents have neither endeavoured nor succeeded in impeaching the credibility of the said handwritten notes during cross-examination or otherwise.

42. The contesting respondents have also argued that the cordial relationship amongst family members renders the exclusion unnatural. Yet, substantial documentary evidence, including the aforementioned letters from the Testator, explicitly contradicts these claims, clearly demonstrating strained family dynamics. The isolated fact of a relinquishment deed, previously executed by the sons for building permissions, is irrelevant to the



testamentary intent, which specifically relates to emotional support and care, not property contributions alone.

43. In any event, in the case of *S.Sundaresa Pai v. Sumangala T. Pai*²¹, the Supreme Court has unambiguously held that uneven distribution of assets amongst children, by itself, cannot be taken as a circumstance causing suspicion surrounding the execution of the will. A similar view was taken by the Supreme Court in *Ramabai Padmakar Patil (Dead) through LRS. v. Rukminibai Vishnu Vekhande*²², deciding that the mere fact that entire property was given to only one of the natural heirs, widowed daughter, to the exclusion of others, is not a suspicious circumstance when it was done with a view to make provision for the widow who had been left destitute at an early age.

44. As far as the allegation of the Testator's mental incapacity is concerned, it is a settled principle that the burden of proving unsoundness of mind lies upon the person asserting it. The contesting respondents have not produced any medical records, expert testimony, or direct evidence to support their claim. Instead, they rely on the Testator's age, a history of periodic blood transfusions, and general physical debility. However, none of these factors are sufficient to establish legal incapacity. In *Rajesh Sharma v. Krishan Kumar Sharma*²³, this Court, while rejecting the contention that 12 years of illness would prejudice a sound disposing mind, held that before holding a person to be of unsound mind, there must be sufficient medical record showing the lack of soundness of mind on the anvil of preponderance

²¹ (2002) 1 SCC 630

²² (2003) 8 SCC 537

²³ FAO 641/2002



of probabilities. Therefore, it is not prudent to equate physical illness to mental incompetence. Testamentary capacity requires that the Testator understands the nature of the act and its consequences something which is clearly evident in the facts of the case at hand.

45. Further, the Testator's active legal conduct post-execution of the Will strongly indicates mental competence. He personally executed and registered a conveyance deed concerning the same property after the date of the Will. This document, marked as Ex. PW-1/15, along with conversion challans (Ex. PW-1/16 and PW-1/17), confirms that he remained capable of managing legal affairs and appeared before the Sub-Registrar to complete formalities. The execution of such a document post-Will significantly reinforces the presumption of testamentary capacity. Notably, the respondents have projected this instance as one raising a doubt over the Will by contending that since the Testator stepped out for registration of the conveyance deed at a subsequent stage, he could also have stepped out for the registration of the Will in question. Thus, it has been contended, the Will was not executed by him. In the considered opinion of this Court, based on the un rebutted oral and documentary evidence on record, the said circumstance does not turn the case in favour of the respondents. For, the Testator was under no legal or statutory obligation to register the Will in question. No adverse inference could be drawn on this basis, especially when the inference is not supported by surrounding evidence.

46. Moreover, PW-2, who is also a medical practitioner, testified specifically that Shri Ram Lal was in a sound state of mind and physically



stable on the date of execution. His medical opinion, given during cross-examination, was clear and unambiguous:

"The testator was in a sound state of mind as well as physically fit."

47. The objection regarding poor eyesight due to cataract is equally misplaced. Respondent No. 4 himself admitted during cross-examination that the testator underwent successful surgery and was able to see properly thereafter. This is further corroborated by the medical record dated 21.09.1999, evidencing the completion of cataract treatment well before the execution of the Will.

48. Notably, the respondents' own case is marred by contradictions. Initially, they claimed that the Testator required blood transfusions every three weeks, implying physical weakness. Later, they shifted their claim to allege that he was suffering from terminal leukaemia. Neither assertion is supported by medical evidence nor documentation which could show that the said illness had any effect over the mental soundness of the Testator. The shifting narrative only weakens their credibility and suggests a post hoc attempt to discredit the Will without factual basis.

49. Another allegation that the Will is fabricated due to typographical discrepancies ignores practical realities of typewritten documents, especially lengthy ones prepared over multiple sittings. Such minor inconsistencies paradoxically affirm authenticity, rather than forgery, as a forged document would likely exhibit uniform formatting. There does not appear to be any glaring discrepancy in the writing of the Will which could invalidate the Will itself. Insofar as the allegations of coercion or undue influence are



concerned, no credible evidence has been led to substantiate the same except bald assertions in that regard.

50. Much reliance has been placed on the letter dated 01.10.2001 being PW-1/18, addressed to the MCD by the petitioner, to contend that when the death certificate was itself issued by the Government of NCT of Delhi on 05.10.2001, there did not lie any opportunity for the petitioner to enclose the same in the letter which was sent prior in time. However, it came to be explained by the petitioner that the death certificate mentioned in the said letter relates to the death certificate issued by the hospital and not the one dated 05.10.2001, which was issued subsequent to obtaining the certificate from the hospital. A perusal of the said letter would indicate that the same only mentions “death certificate” as one of the enclosed documents. Therefore, it would be incorrect to proceed merely on an assumption that the same hinted towards a document which was not issued at the extant point of time.

51. In light of the above, the Will dated 12.06.2000 stands duly proved both in terms of execution and the Testator’s mental capacity. The petitioner has discharged the burden of proof through credible and consistent evidence, while the objectors have failed to substantiate their allegations. The circumstances raised by the respondents, purportedly as suspicious circumstances, have been duly explained by the petitioner and no element of suspicion survives so as to draw any adverse inference against the execution of the Will or mental capacity of the Testator. Accordingly, the Issue No. II is also decided in favour of the petitioner.

Issue No. III



52. This issue relates to the maintainability of the present petition. Under the Succession Act, an Executor named in a Will holds the primary duty and responsibility to seek probate of the Will. However, if the named Executor refuses, or is unable to perform his legal obligations due to circumstances such as ill health or death, the Succession Act clearly permits a beneficiary or interested person under the Will to initiate proceedings for issuance of LoA.

53. As already mentioned in the preface part of this judgment, though the present petition ought to have been filed seeking issuance of LoA but the said deficiency would not lead to the dismissal of the petition itself, particularly at this stage. For the sake of brevity, the law on this aspect is not reiterated.

54. As a matter of fact, in the present case, the Executor explicitly named in the Will dated 12.06.2000 was Dr. R.S. Chaudhary. The record conclusively demonstrates that Dr. Chaudhary, citing health concerns, formally expressed his inability to file and contest the probate petition. Specifically, vide letter dated 07.10.2005 (Ex. PW-1/1), Dr. Chaudhary unambiguously stated that due to personal health constraints, he could not undertake the probate proceedings. This written communication, duly exhibited and proved on record, constitutes a clear and categorical refusal on the part of the Executor, satisfying the statutory pre-condition for allowing a beneficiary to step into the shoes of the Executor.

55. Further reinforcing this position, it was also brought to the knowledge of this Court by the petitioner that subsequently, Dr. Chaudhary passed away in December, 2007. This event rendered his participation permanently



impossible. While the respondent Nos. 2 to 4 have contested the delay in disclosing the Executor's death, they have not materially contradicted the authenticity or substance of Dr. Chaudhary's refusal letter, nor have they disproved his eventual demise.

56. The petitioner, who is explicitly named beneficiary under the Will, is thus legally competent and statutorily permitted to pursue this petition upon refusal or incapacity of the Executor, as per settled provisions under the Succession Act. Hence, the refusal of the Executor having been established by the documentary evidence on record (the Executor's letter) and further supported by subsequent events (the Executor's death), the present petition filed by the petitioner is entirely lawful and maintainable.

57. Thus, issue No. III is affirmatively answered in favour of the petitioner, holding clearly that Dr. R.S. Chaudhary, the Executor, had indeed refused to present the petition, and consequently, the present petition by the petitioner is legally maintainable.

58. Before moving to the issue No. IV i.e., Relief, it is imperative to highlight the dictum laid down in the case of *Leela Rajagopal v. Kamala Menon Cocharan*²⁴, which reinforces the position that in reaching any conclusion on the validity of the Will, what weighs with the Court is the cumulative effect of all the alleged unusual features put together, and not the impact of any single feature that may be found in a Will. The conclusion of the Court is to be based on the satisfaction of judicial conscience on a comprehensive examination of the circumstances alleged to be suspicious and the explanation tendered by the propounder of the Will. No rigid rule

²⁴(2014) 15 SCC 570



can be laid down in matters which are of inferential character, based on judicial conscience and satisfaction of the Court, and not on direct evidence.

Paragraph 13 of the said decision reads as under:-

“13. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us.”

Issue No. IV

59. In view of aforementioned discussion, there does not seem to be any other Will after the Will dated 12.06.2000. The same is, thus, found to be the last Will and testament in terms of the requirement of Section 276 of the Succession Act. The death certificate, as has been noted hereinabove, is also not disputed. The Court, thus, finds that the said Will is a legally executed document, and on the basis thereto, the petitioner is entitled to issuance of LoA with respect to the Will dated 12.06.2000.

60. Upon cumulative appraisal of the material on record and the submissions made by the parties, the following factual position emerges:

- i. **Issue No. I** – has been answered in the negative and is in favour of the petitioner. The petition has been filed within the period of limitation



as prescribed under Article 137 of the Limitation Act, 1963. The contesting respondents have failed to produce any credible evidence to show intentional delay or abandonment of rights by the petitioner, nor have they discharged their evidentiary burden in establishing the petitioner's prior knowledge of the denial of the Will.

- ii. **Issue No. II** –is also decided in favour of the petitioner. The Will dated 12.06.2000 stands duly proved in accordance with law. The petitioner has successfully discharged the burden of proof, and the alleged suspicious circumstances raised by the respondents have been adequately explained.
 - iii. **Issue No. III** –is answered in the affirmative and in favour of the petitioner. The record clearly establishes the Executor's refusal through documentary evidence, and his subsequent death further affirms his inability to act. Accordingly, the petitioner, being a named beneficiary under the Will, is legally entitled to maintain the present petition in accordance with the provisions of the Indian Succession Act.
 - iv. The Court, therefore, finds that the Will dated 12.06.2000 is a legally executed document, and based on the same, the petitioner is entitled to the issuance of a LoA with respect to the said Will.
 - v. All three issues stand decided in favour of the petitioner, and the petition is accordingly held to be lawful, maintainable, and deserving of acceptance.
61. The petitioners are directed to file the requisite Court fee with the registry and in compliance with the said requirement, let the registry issue



2025:DHC:6805



the LoA in favour of the petitioner along with the copy of the Will which was furnished to the Court. The petitioner is further exempted from furnishing any security bond.

62. With the aforesaid directions, the instant petition stands allowed. The application(s), if any, stands disposed of. Parties to bear their own Costs.

(PURUSHAINDRA KUMAR KAURAV)

JUDGE

AUGUST 08, 2025/aks