



2026:DHC:3158



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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ **TEST.CAS. 32/2018**

LIPIKA SUD

WIFE OF HEMANT SUD

DAUGHTER OF S.N. MAJUMDAR

W-26, GROUND FLOOR

GREATER KAILASH - II

NEW DELHI 110048

....PETITIONER

(Through: Mr. Rajesh Yadav, Sr. Advocate with Mr. Mohd. Umar, Advocate along with Petitioner in person.)

Versus

1. STATE

THROUGH SDM

CHITTARANJAN PARK

GNCT OF DELHI

2. HEMANT SUD

SON OF LATE H.L. SUD

W-26, SECOND FLOOR

GREATER KAILASH - II

NEW DELHI 110048

....RESPONDENTS

(Through: Mr Samman Vardhan Gautam, Ms Khushi Sharma, Mr.Priyam Tiwari, Ms Anshika Priyadarshini and Ms Pooja Sharma Advocates for Respondent no. 2)

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Reserved on: 09.03.2026

Pronounced on: 16.04.2026

JUDGMENT

The present petition has been instituted by the petitioner, Mrs. Lipika Sud, seeking the grant of probate under Section 276, read with Sections 278 and 234 of the Indian Succession Act, 1925 (hereinafter "**the Act**") of the Will dated 08.08.2012 (hereinafter "**Will**"), stated to have been executed by her deceased mother-in-law, Late Smt. Suraksha Sud (hereinafter "**the testatrix**"). Respondent No. 2, Hemant Sud, is the adopted son of the testatrix and the husband of the petitioner.

2. The testatrix left for her heavenly abode on 25.08.2012, following an ailment of sepsis and food poisoning. Under the purported Will, the testatrix bequeathed a residential plot measuring 500 sq. yds. situated at Saraswati Kunj, Gurgaon, and Flat No. 503, 5th Floor, Kanchanjunga Building, Barakhamba Road, along with two commercial car parking spaces, in favour of her granddaughters, Ms. Sanjana Sud and Ms. Shreya Sud, who are the daughters of the petitioner and respondent No. 2. The property bearing No. W-26, Greater Kailash-II, New Delhi (hereinafter "**the GK Property**") was bequeathed in equal shares to the petitioner, as the daughter-in-law of the testatrix, and to respondent No. 2. Additionally, all bank balances and investments were bequeathed to respondent No. 2, the jewellery to the granddaughters, and a sum of INR 10,00,000/- to the testatrix's niece, Kanta Sood.



3. The GK Property was originally allotted to Late Sh. H.L. Sud and the Testatrix, who had together adopted respondent No. 2. The petitioner married respondent No. 2 on 26.01.1989 and has since been residing at the GK Property. Two daughters were born from the wedlock, namely Ms. Sanjana Sud and Ms. Shreya Sud. Upon the demise of Sh. H.L. Sud on 22.01.2009, his entire share in the GK Property devolved upon the testatrix by virtue of a Will executed by him, whereafter she became the absolute owner thereof.

4. It is the petitioner's case that she shared cordial relations with her in-laws. In the year 2012, during a family trip to Goa organised to celebrate the birthday of the testatrix, the petitioner disclosed to her mother-in-law certain alleged financial irregularities committed by respondent No. 2 in relation to the affairs of the company run by the petitioner, including alleged siphoning of company funds and the opening of bank accounts and loans in the petitioner's name without her knowledge. It is stated that upon being so apprised, the testatrix expressed apprehension regarding the security of the family after her demise, disclosed that she had earlier signed certain blank papers at the instance of respondent No. 2, and informed the petitioner that she had made arrangements in her estate to safeguard the future of the petitioner and her granddaughters.

5. Thereafter, disputes arose between the petitioner and respondent No. 2. Consequent to the same, the petitioner instituted proceedings under the Protection of Women from Domestic Violence Act, 2005 (hereinafter “**the DV Act**”) on 28.08.2014 seeking protection of her right to reside in the GK Property, in addition to various civil proceedings seeking redressal of her grievances against respondent No. 2.



6. As per the petition, in May 2018, certain persons allegedly brought by Respondent No. 2 began residing in the GK Property, on account of which the petitioner decided to vacate the premises owing to safety concerns. While in the process of packing her belongings, the petitioner claims to have discovered the original of the purported Will dated 08.08.2012 in a leather bag belonging to the deceased testatrix, from the ground floor of the GK Property where the testatrix had resided until her demise.

7. The purported Will bears the signatures of the testatrix and two attesting witnesses, namely Mr. Raju Sahni and Mr. Shamsheer Kalra. Mr. Raju Sahni, described as a family friend, is stated to have passed away prior to the filing of the present petition. The surviving attesting witness, Mr. Shamsheer Kalra, has filed an affidavit before this Court in support of the due execution of the purported Will. On the aforesaid basis, the petitioner seeks the grant of probate of the purported Will.

8. Notice was issued in the petition on 24.05.2018, and subsequently on 28.11.2018, the Court framed the following issues: -

- i) *Whether late Smt. Suraksha Sud legally and validly executed the Will dated 8th August, 2012? OPP til*
- ii) *Whether Will dated 8 August, 2012, propounded by the petitioner, is a forged and fabricated Will? OPR-2*
- iii) *Relief.*

9. In order to discharge the onus of proof for the aforementioned issues, the parties examined the following witnesses: -

| S.No | Witness | Description |
|-------------|----------------|------------------------------|
| 1. | PW-1 | Mrs. Lipika Sud (Petitioner) |



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| 2. | PW-2 | <i>Samarendra Nath Majumdar (father of Petitioner),</i> |
| 3. | PW-3 | <i>Debashish Majumdar (brother of Petitioner),</i> |
| 4. | PW-4 | <i>Mrs. Durgesh Nandini (Notary Public),</i> |
| 5. | PW-5 | <i>Dr. Sarita Sharma (Senior Scientific Assistant, FSL),</i> |
| 6. | PW-6 | <i>Vivek Seigell (childhood friend of Petitioner),</i> |
| 7. | PW-7 | <i>Mr. Shamsher Kalra (attesting witness to the alleged Will).</i> |
| 8. | DW-1 | <i>DW-1 Mr. Hemant Sud (Respondent No. 2),</i> |
| 9. | DW-2 | <i>DW-2 Mr. Devak Ram Sharma (Forensic Document and Fingerprint Expert, former Assistant Director, FSL Delhi).</i> |

10. Further, the parties also exhibited various documents that tabulated as under

| S.No | Witness | Description |
|-------------|-----------------------------|---|
| 1. | <i>Ex. PW-1/1</i> | <i>Will dated 08.08.2012</i> |
| 2. | <i>Ex. PW-1/2 to PW-1/8</i> | <i>Photographs from the Goa trip</i> |
| 3. | <i>Ex. PW-1/9</i> | <i>Mobile picture of admission register of Talwar Nursing Home,</i> |
| 4. | <i>Ex. PW-1/10</i> | <i>Complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005</i> |
| 5. | <i>Ex. PW-1/11</i> | <i>Order dated 28.08.2014 passed in the domestic violence complaint,</i> |
| 6. | <i>Ex. PW-1/12</i> | <i>Reply filed by Respondent No. 2 in the domestic violence proceedings</i> |
| 7. | <i>Ex. PW-1/13</i> | <i>Order dated 05.06.2015,</i> |
| 8. | <i>Ex. PW-1/14</i> | <i>Order dated 18.06.2015</i> |
| 9. | <i>Ex. PW-1/15</i> | <i>Plaint in CS(OS) No. 1441/2015,</i> |
| 10. | <i>Ex. PW-1/16</i> | <i>Written Statement in CS(OS) No. 1441/201</i> |



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|-----|--------------------|--|
| 11. | <i>Ex. PW-1/17</i> | <i>Copy of Plaint in CS(OS) No. 681/2017</i> |
| 12. | <i>Ex. PW-1/18</i> | <i>FIR No. 284/2015 under Sections 420/467/468/471 IPC registered at PS Chitaranjan Park</i> |
| 13. | <i>Ex. PW-1/19</i> | <i>Status Report dated 04.04.2019 submitted by the Investigating Officer</i> |
| 14. | <i>Ex. DW-1/1</i> | <i>Registered Relinquishment Deed dated 01.02.200924</i> |
| 15. | <i>Ex. DW-1/2</i> | <i>Allotment Letter dated 14.06.1990 for Farm Houses No. 10A and 10B, Bagicha Farms Complex</i> |
| 16. | <i>Ex. DW-1/3</i> | <i>Registered Will of Late Sh. H.L. Sud dated 29.05.2003</i> |
| 17. | <i>Ex. DW-1/4</i> | <i>Sale Deed dated 19.01.2007</i> |
| 18. | <i>Ex. DW-1/5</i> | <i>Trust Deed dated 12.05.2011 executed by the testatrix</i> |
| 19. | <i>Ex. DW-1/7</i> | <i>Report of Sh. Devak Ram Sharma, Asst. Director (Retd.), FSL Delhi</i> |
| 20. | <i>Ex. DW-1/8</i> | <i>Criminal Complaints dated 14.05.2015, 23.08.2015 and MLC of Shreya dated 21.08.2015</i> |
| 21. | <i>Ex. DW-1/9</i> | <i>FIR No. 55/2018, PS CR Park</i> |
| 22. | <i>Mark A</i> | <i>Email communications between the testatrix and M/s Warmond Trustees & Executors Pvt. Ltd.</i> |

Submissions

11. Mr. Rajesh Yadav, learned senior counsel appearing on behalf of the petitioner, has advanced the following submissions: -

- a. The Will has been executed in conformity with Section 63 of the Act. The testatrix affixed her signature in the simultaneous presence of two attesting witnesses, namely Mr. Raju Sahni, since deceased prior to the filing of the Petition, and Mr. Shamsher Kalra (PW-7), who in turn attested the Will in the presence of the testatrix and of each other. In the affidavit of PW-7 sworn before this Court, he categorically deposed that he was present and witnessed the testatrix affixing her signature,



that he, thereafter, signed the Will in the presence of the testatrix and the other attesting witness. Although PW-7 was declared hostile during the course of trial, the law is well-settled that the testimony of a hostile witness is not to be entirely discarded.

- b. Furthermore, the testimony of Smt. Durgesh Nandini, Notary Public (PW-4), lends material corroboration to the due execution of the Will. PW-4 deposed that the Will was presented before her, that the testatrix signed it in her presence, and that she attested the document on 08.08.2012 in her official capacity, with her signatures appearing at Point 'Z' of the Will. Though the Notary Public is distinct from an attesting witness under Section 63(c) of the Act, her evidence is nonetheless relevant and admissible to establish the circumstances attending the execution, particularly in light of the death of one attesting witness and the hostile turn taken by the other.
- c. The evidence of DW-2, Mr. Devak Ram Sharma, the handwriting expert examined on behalf of respondent No. 2, is rendered unreliable by his own admissions in cross-examination. Specifically, DW-2 admitted that he relied upon photocopies rather than original documents for the purpose of signature comparison, and that the passport used by him for comparison was neither furnished by its holder nor by any family member, thereby fundamentally undermining the foundation of the respondent's case on this aspect.



d. Reliance is placed upon *M.B. Ramesh v. K.M. Veeraje Urs*,¹, *Janki Narayan Bhoir v. Narayan Namdeo Kadam*,² *Ajay Kumar v. The State and Ors.*³, and *Khujji v. State of M.P.*⁴.

12. *Per contra*, Mr. Samman Vardhan Gautam, learned counsel appearing on behalf of respondent No. 2, submitted as under: -

- a. The Will is surrounded by several glaring suspicious circumstances. Primary among them being that despite the petitioner having instituted more than five legal proceedings prior to the instant petition, there is no whisper about the Will in any of these proceedings. It is further submitted that the Will was not entrusted to the custody of any person and surfaced only after nearly six years of its execution, allegedly just seventeen days before the death of the testatrix.
- b. It was also brought on record the fact that the testatrix had already created H.L. Sud Family Trust and had executed a Registered Relinquishment Deed dated 01.02.2009, relinquishing her 50% share in the GK Property in favour of respondent No. 2, and therefore could not have bequeathed the said property in the manner alleged. Emphasis is placed on the testimony of PW-7, the sole surviving attesting witness, who during examination-in-chief denied having seen the testatrix sign the Will and denied having any acquaintance with the testatrix at any point of time. Thus, as per respondent no.2's

¹ (2013) 7 SCC 490

² (2003) 2 SCC 91

³ 2017 SCC OnLine Del 8973

⁴ (1991) 3 SCC 627.



case, the petitioner has failed in demonstrating that the mandatory requirements of Section 63 of the Act have been complied with. Further, the expert report of DW-2 categorically establishes that the signatures of the testatrix are forged and that the signature of the attesting witness Mr. Raju Sahni has been traced from his passport.

- c. Reliance is placed upon *H. Venkatachala Iyengar v. B.N. Thimmajamma*,⁵, *Kavita Kanwar v. Pamela Mehta & Others*,⁶ *Dhaniram (Died) through LRs & Ors. v. Shiv Kumar*,⁷

13. I have heard learned counsel appearing for the parties and have perused the record.

Analysis

14. Before proceeding to examine the facts of the present case, it would be apposite to set out the legal framework governing the standard of proof of testamentary instruments and the doctrine of suspicious circumstances, as enunciated by the Supreme Court in a catena of judgements.

15. The law governing the proof of a Will is no longer *res integra*. A Will, unlike other documents, speaks after the death of the testator, at which point the testator is no longer available to confirm or deny its contents. The very nature of a testamentary document, therefore, demands that the Court apply a higher degree of scrutiny before acting upon it. At the same time, the

⁵ AIR 1959 SC 443;

⁶ (2021) 11 SCC 209

⁷ 2023 SCC Online SC 1263



standard of proof required is not that of proof beyond reasonable doubt as applicable in criminal proceedings, but rather the satisfaction of the prudent mind, which is the civil standard of proof on a preponderance of probabilities. The propounder of a Will is not required to prove it with mathematical precision, but must bring on record sufficient material to satisfy the judicial conscience that the Will is genuine and was executed by the testator in accordance with law.

16. The foundational requirements for the valid execution of a Will are contained in Section 63 of the Act which mandates that the testator shall sign or affix his mark to the Will, or shall cause some other person to sign it in his presence and by his direction, and that such signature or mark shall be so placed that it shall appear that it was intended to give effect to the writing as a Will. Most importantly, Section 63(c) of the Act requires that 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, and each of the witnesses shall sign the Will in the presence of the testator. Section 68 of the Indian Evidence Act, 1872 (hereinafter “**Evidence Act**”) further provides that if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution. The combined effect of these provisions is that the examination of at least one attesting witness is a condition precedent to the grant of probate, and no amount of other evidence can substitute for this mandatory requirement.

17. The initial burden of proving a Will lies on its propounder. This burden is discharged upon proof of the essential facts, namely that the



testator had testamentary capacity at the time of execution, that the Will was executed and attested in the manner prescribed by law, and that the testator knew and approved of its contents. Once this primary burden is discharged, the burden shifts to those who oppose the grant. However, the nature and weight of the burden on the propounder undergoes a significant transformation when the Will is surrounded by suspicious circumstances.

18. In the aforesaid regard, the law has been authoritatively stated by the Supreme Court in *H. Venkatachala Iyengar* wherein, it was held that if a Will is surrounded by suspicious circumstances, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator. The onus on the propounder, in such a case, is not merely to prove the formal requirements of execution but to satisfy the Court by cogent, convincing, and reliable evidence that the document represents the free, voluntary, and genuine expression of the testamentary intent of the testator.

19. In *Kavita Kanwar v. Pamela Mehta & Others*,⁸ the Supreme Court emphasised that in a case where the only attesting witness examined either fails to support the execution of the Will or turns hostile, the Court is entitled to take an adverse view of the matter, and the mandatory requirements of Section 63 of the Act and Section 68 of the Evidence Act must be treated as not satisfied. The Court reiterated that the examination of an attesting witness is not a mere formality but goes to the root of the matter, and the failure of an attesting witness to depose to the due execution of a Will is a circumstance of the most serious consequence.

⁸ (2021) 11 SCC 209



20. In *Shivkumar v. Sharanabasappa*,⁹ the Supreme Court further held that the test of satisfaction of the judicial conscience is the operative standard in all cases involving suspicious circumstances, and that this test is more demanding than the ordinary civil standard of proof. The Court is required to be fully satisfied, upon a careful and circumspect consideration of all the evidence, that the Will propounded is genuine and represents the free and uninfluenced testamentary intention of the testator.

21. In *Janki Narayan Bhoir*, the Supreme Court laid down with great precision the requirements of valid attestation under Section 63 of the Act, holding that the attesting witness must have been present at the time of execution and must have seen the testator sign the Will, and that without this, the requirements of attestation are not fulfilled. The Court held that attestation is not a mere formality but a substantive requirement, the absence of which is fatal to the grant of probate.

22. The doctrine of suspicious circumstances received its most comprehensive and authoritative exposition by the Supreme Court in *Meena Pradhan & Ors. v. Kamla Pradhan & Ors.*,¹⁰ wherein the Court undertook an exhaustive survey of the entire body of law on the subject and crystallised the governing principles with admirable clarity. In *Meena Pradhan*, the Supreme Court held that suspicious circumstances are not a term of art and do not admit of a rigid or exhaustive definition. The Court reiterated that to qualify as a suspicious circumstance, there must exist a real, cogent, and genuine reason for doubt, not merely a circumstance manufactured for the sake of argument or speculation. The Court further held that the following

⁹ (2021) 8 SCC 578

¹⁰ (2023) 4 SCC 768



circumstances, amongst others, may give rise to suspicion warranting heightened scrutiny: a shaky or doubtful signature of the testator; a feeble or uncertain mind of the testator at the time of execution; an unfair and unjust disposition of the testator's estate; the exclusion of natural and dependent heirs without cogent explanation; the active and leading role of the beneficiary in the preparation and execution of the Will; the execution of the Will in the vicinity of death without satisfactory explanation; the non-disclosure of the Will for an inordinately long period after the testator's death; the execution of a Will in a manner wholly inconsistent with the testator's established habits and practice; and the propounding of a Will by a person who stands to gain substantially therefrom, in suspicious circumstances pointing to fabrication.

23. In *Meena Pradhan*, the Supreme Court also emphasised that the doctrine of suspicious circumstances must be applied holistically and not piecemeal. Individual circumstances, each of which might appear explicable in isolation, may in their totality create a cumulative effect of suspicion so overwhelming as to disentitle the propounder from the grant of probate. The Court further clarified that once suspicious circumstances are established, the burden on the propounder is a heavy one and cannot be discharged by mere formal proof of execution or by calling upon the Court to extend benefit of the doubt.

24. If upon the anvil of the aforesaid comprehensive delineation of law the Will is examined, it is seen that the same is surrounded by grave, compelling, and significant suspicious circumstances, which make it difficult for the judicial conscience of this Court to grant probate in favour



of the petitioner. This Court proceeds to examine each circumstance as under:-

I. Execution in Proximity to Death

25. The testatrix is stated to have passed away on 25.08.2012. As per the petitioner's own case, the Will bears the date 08.08.2012, which means it was purportedly executed a mere seventeen days before the testatrix's death. It is stated by the petitioner herself that the testatrix had fallen gravely ill on 12.08.2012 after consuming contaminated prasada at the Arya Samaj Mandir in Greater Kailash-II, had suffered a collapse, and was admitted to Talwar Nursing Home, from where she was shifted to Pushpawati Singhanian Research Institute where she was diagnosed as a terminal case. She was thereafter, brought home and passed away on 25.08.2012.

26. The medical trajectory of the testatrix in the last weeks of her life raises serious doubts about her physical and mental condition at the time of the alleged execution of the Will on 08.08.2012, which is merely four days before the recorded date of her falling ill on 12.08.2012. The Petitioner has not placed on record any medical evidence to establish that the testatrix was in good health and sound testamentary capacity on 08.08.2012. As held by the Supreme Court in *Meena Pradhan*, execution of a Will in close proximity to death, without satisfactory explanation, is a circumstance of grave suspicion.

II. Inordinate Delay in Propounding the Will and Conspicuous Silence Across Multiple Proceedings



27. The testatrix passed away on 25.08.2012. The present petition was filed only in 2018, nearly six years after the death of the testatrix. The Petitioner's case is that the Will was discovered only in May 2018. However, the Petitioner's own evidence, as well as the testimony of PW-3, Sh. Samarendra Nath Majumdar, establishes that the Petitioner was aware of the existence of the Will and its contents well prior to the alleged discovery. The Petitioner had, during this period of nearly six years, instituted no fewer than five judicial proceedings across various forums, lodged an FIR bearing No. 284/2015 under Sections 420/467/468/471 IPC at PS Chitaranjan Park, executed a Settlement Deed dated 02.02.2015, and filed a complaint under Section 12 of the DV Act, 2005. In not a single one of these proceedings, including the FIR which specifically alleged forgery of a Will, did the Petitioner make any reference whatsoever to the existence of the alleged Will dated 08.08.2012. The Civil Suit CS(OS) No. 1441/2015 filed by the petitioner herself specifically sought a declaration that the Will dated 10.02.2012 and the H.L. Sud Family Trust were void, and yet even in this suit there is not a whisper of any other Will. The Settlement Deed dated 02.02.2015 executed by the Petitioner herself mentions only the Will dated 10.02.2012, without any reference to any other Will.

28. This Court finds it wholly inconceivable that a person who is aware of a Will executed in her favour, and who is simultaneously engaged in litigation with the very person against whom the Will operates, involving the very property bequeathed under the Will, would not breathe a single word about the existence of that Will across all these proceedings over a period of nearly six years. The non-disclosure of a Will for an inordinately long period, particularly by a person engaged in active litigation over the very



subject matter of the Will, is a circumstance of the gravest suspicion. The Petitioner's explanation that she was aware of the existence of the Will but had not physically traced the document is wholly unsatisfactory. If she was aware of its existence and contents, nothing prevented her from taking the position across her various proceedings that a Will existed in her favour and that she was in the process of tracing the original. Her deliberate and complete silence across all proceedings is entirely inconsistent with the conduct of a genuine and *bona fide* beneficiary.

III. The Inherently Improbable Discovery Narrative

29. The story of the discovery of the Will is, upon careful examination, inherently improbable and unworthy of credence. The Petitioner claims to have discovered the original Will in May 2018 in a leatherette bag belonging to the testatrix, allegedly kept undisturbed in the ground floor of the GK Property since the death of the testatrix in August 2012. The Petitioner herself was residing in the very same premises throughout this period. The leatherette bag was not hidden in any locked or inaccessible location, but was present in the room of the testatrix on the ground floor. The Petitioner's own evidence discloses that the bag contained daily use articles of the testatrix, including daily jewellery, a Nivea cream, keys, expired passports, and a debit card. The photograph of the bag, which has been exhibited on record, confirms this. This Court finds it wholly incredible that a bag containing such valuable daily use articles of a recently deceased family member, including jewellery and financial instruments, would have been left entirely undisturbed and unopened by any member of the household for a period of nearly six years. This is not the conduct of a prudent person, nor is



it consistent with any normal human experience. Any person of ordinary prudence would have sorted through the belongings of a recently deceased family member within a reasonable time of her death, particularly when those belongings included daily use jewellery and financial documents. The improbability of this narrative is so palpable as to warrant the inference that the discovery story has been fabricated to explain the belated propounding of the Will.

IV. Failure of Attesting Witness Evidence and Non-Compliance with Section 63 of the Indian Succession Act, 1925

30. As noted above, the mandatory requirements of Section 63 of the Act demand that the Will be attested by two or more witnesses, each of whom must have seen the testator sign the Will. Section 68 of the Indian Evidence Act further requires that at least one attesting witness be called to prove the execution of the Will. In the present case, one of the two attesting witnesses, Mr. Raju Sahni, had predeceased the filing of the petition, making it impossible to examine him. The sole surviving attesting witness, Mr. Shamsher Kalra (PW-7), was accordingly examined before this Court and his testimony is the most critical piece of evidence on record.

31. PW-7's evidence is, in its totality, wholly destructive of the Petitioner's case. In his examination-in-chief, PW-7 stated that while he identified his own signature on the Will, he could not identify the signatures of the testatrix and did not know whether Mr. Raju Sahni had signed the Will. When PW-7 failed to support the Petitioner's case, he was declared hostile by the Petitioner's own counsel. Upon further cross-examination at the instance of the Respondent's counsel, PW-7 made the following



devastating admissions: that he had never met the testatrix at any point of time; that he had never seen the testatrix sign the alleged Will in his presence; and that he had no acquaintance whatsoever with the other attesting witness, Mr. Raju Sahni. These are not merely admissions of a faded memory or a want of recollection; they are categorical, positive, and unequivocal denials of the very factual foundation upon which the alleged Will rests.

32. The Petitioner's learned Senior Counsel has sought to urge that notwithstanding PW-7's hostility, certain portions of his testimony, specifically his identification of his own signature on the Will, constitute a dependable part of his evidence and are sufficient to prove due execution. This Court is unable to accept this submission. The principle in *Khuji*, upon which reliance is placed by Mr. Yadav, is that the testimony of a hostile witness may be accepted to the extent it is found to be credible upon careful scrutiny. However, the portions of PW-7's testimony that the petitioner seeks to rely upon, namely, his identification of his own signature cannot by themselves establish due execution under Section 63 of the Act. The statutory requirement is not merely that the attesting witness signed the Will, but that he did so having seen the testator sign the Will in his presence. PW-7 has expressly and categorically denied having seen the testatrix sign the Will and has denied ever having met the testatrix at all. This positive denial, elicited upon cross-examination, is a part of PW-7's testimony that is entirely credible, consistent, and unshaken, and this Court is bound to act upon it. As held by the Supreme Court in *Janki Narayan Bhoir*, due attestation requires the attesting witness to have been present at the time of execution and to have seen the testator sign the Will. In the absence of such



evidence, and in the face of a positive denial by the attesting witness, the mandatory requirements of Section 63 of the Act must be treated as not satisfied. Moreover, the evidence of PW-4, the Notary Public, cannot substitute for the evidence of an attesting witness, as her role is entirely distinct and does not satisfy the requirements of Section 63(c) of the Act. Her evidence at best establishes that a document was presented before her for notarisation, which is a far cry from establishing that the testatrix signed the Will in the presence of two attesting witnesses in compliance with Section 63 of the Act.

V. The Forensic Evidence Establishing Forgery

33. Respondent No. 2 took timely and appropriate steps to challenge the authenticity of the signatures on the alleged Will by filing an application for de-sealing of the Will and seeking permission to have it forensically examined. This Court *vide* order dated 20.08.2018 permitted the same, and DW-2, Mr. Devak Ram Sharma, former Assistant Director (Retd.) of the Forensic Science Laboratory, Delhi, examined the original Will and prepared a detailed expert report, exhibited as Ex. DW-1/7. The said report, which has been placed on record and proved through the oral evidence of DW-2, categorically opines that the signatures of the testatrix on the alleged Will are forged and fabricated, and that the signature of the deceased attesting witness, Mr. Raju Sahni, appearing on the Will has been traced from his passport. The petitioner has sought to undermine the credibility of DW-2 by pointing to his admission in cross-examination that he relied upon photocopies for certain comparisons, and that the passport of Mr. Raju Sahni used for comparison was not furnished by his family. While these are valid



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points of criticism going to the weight to be attached to the expert opinion, they do not entirely neutralise its value. The expert evidence of DW-2 must be read in the context of the totality of the suspicious circumstances on record. Thus, this Court accordingly finds that the forensic evidence, read alongside the other circumstances enumerated herein, lends further and compelling support to the conclusion that the Will is under grave suspicion.

34. In view of the foregoing analysis and findings, it is seen that the petitioner has failed to prove the due and valid execution of the Will by the testatrix.

35. Accordingly, the instant petition stands dismissed. No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

APRIL 16, 2026

Nc