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

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

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**TEST.CAS. 55/2013**

**SANJAY KUMAR JAIN**  
S/O LATE SHRI S.C.JAIN  
R/O FLAT NO.29,  
DAKSHINESHWAR BUILDING,  
10, HAILEY ROAD,  
NEWDELHI- 110001.

**RAJIV KUMAR JAIN**  
S/O LATE SHRI S.C. JAIN  
R/O FLAT NO.2/A, MONOLITH BUILDING,  
7, NEPEANSEA ROAD,  
MUMBAI-400 036.

....PETITIONERS

*(Through: Mr. Rajesh Banati, Mr. Aditya Mishra, Mr. Ashish Sareen and  
Mr.Adil Asghar, Advocates.)*

VERSUS

**STATE**  
GOVT. OF NCT OF DELHI

**SHASHI KUMAR JAIN**  
S/O LATE SHRI S.C. JAIN  
R/O FLAT NO.2/B, MONOLITH BUILDING,



7, NEPEANSEA ROAD,  
MUMBAI - 400 036

**RASHMI AGGARWAL**  
W/O SHRI MUKUL AGGARWAL  
R/O C-23, FRIENDS COLONY EAST,  
NEW DELHI - 110 065

...RESPONDENTS

(Through: *Ms. Avni Singh, Panel Counsel with Mr. Abhimanyu Kapoor, Advocate for R-1.*  
*Mr. Varun Kumar and Ragini Kapoor, Advocates for R-2.*  
*Mr. Vineet Mehta, Advocate for R-3.*)

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% Reserved on: 19.11.2025  
Pronounced on: 16.12.2025  
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### **JUDGMENT**

This petition, filed under Section 276 of the Indian Succession Act, 1925 (*hereinafter referred to as 'the Act'*), seeks the grant of probate in respect of an alleged last Will dated 07.06.2005 executed by late Smt. Mohini Devi Jain (*hereinafter referred to as 'the testatrix'*).

2. The Petitioners and Respondent No. 2 are real brothers, and Respondent No. 3 is their only sister. Bearing in mind that the contesting parties comprise siblings, on multiple occasions, endeavours to facilitate an amicable resolution of the dispute through mediation were made. Notwithstanding these continued efforts, no settlement could be arrived at. Consequently, the Court is now constrained to proceed with the adjudication



of the matter on the merits.

**Factual matrix**

3. The testatrix was married to Late Shri Sukhbir Chand Jain and was a resident of Flat No. 29, Dakshineswar Building, 10 Hailey Road, New Delhi-110001. She passed away on 23.06.2013 in Mumbai. She was survived by four legal heirs, namely Petitioner No. 1, Petitioner No. 2, Respondent No. 2, and Respondent No. 3.

4. The testatrix had allegedly executed her last Will and Testament dated 07.06.2005 (*hereinafter referred to as 'the Will'*) at Delhi. The Will was duly registered in the office of the Sub-Registrar-II, New Delhi, under Registration No. 853, Additional Book No. 3, Volume No. 1428, at pages 33 to 35, on 07.06.2005. As per the Petitioners, the Will names them as the exclusive beneficiaries of various movable and immovable properties of the testatrix.

5. The Will, exhibited as Ex. PW-1/1, is accompanied by Schedule 1 (immovable assets) and Schedule 2 (movable assets), forming part of the testamentary disposition. The will bequeaths the following assets to the sole beneficiaries i.e., the petitioners herein: -

IMMOVABLE( <i>schedule 1 at pdf pg 7 of plaintiff doc</i> )	MOVABLE ( <i>schedule 2 at pdf pg8 of plaintiff doc</i> )
1. 2/5 share in property no. 2-A, Monolith, 7, Neapensea Road Mumbai.	1. Diamond Emreld Set
2. 1/6 share in property no. 3778-83, Pahari Dhiraj, Delhi 110005.	2. One Ruby Bangle
3. 1/5 share in property no. 2-B, Monoiith, 7, Neapensea Road, Mumbai.	3. One Monga String
4. 1/5 share in property no. J-79, South	4. One sitarami set



<i>Extention Part-I, New Delhi-110049 v/</i>	
<i>5. 1/5 share in property no. 29,10, Hailey Road, New Delhi.</i>	<i>8. Gold Braclet &amp; Gold Set</i>
<i>6. Shop no. 3778, Pahari Dhiraj, Delhi-110006.</i>	<i>9. Three Gold Chains</i>
<i>7. 1/2 share in property no. .2-C, Mittal Tower Nariman Point Mumbai.”</i>	<i>10. Gold Ruby Meena Set</i>
	<i>11. Takri Gold Pearl</i>
	<i>12. One pair of gold pearl Bangles</i>
	<i>13. One Diamond Necklace alongwith Bangles and Earrings</i>
	<i>14. Ruby Ring, Diamond Tops.</i>
	<i>15. Silver Dinner Set</i>

6. On 12.09.2014, the Court framed the singular substantive issue: -

*“Whether late Smt. Mohini Devi Jain executed a valid and enforceable Will dated 07.06.2005? OPP*

7. The Petitioners examined four witnesses: -

*PW-1 Sanjay Kumar Jain (Petitioner No. 1 herein),*

*PW-2 Anand Gupta, PW-3 Vivek Anand (attesting witnesses to the Will)*

*PW-4 Daulat Ram, from the Sub-Registrar’s Office.*

8. Respondents No. 2 and 3 also led evidence through RW-1 Shashi Kumar Jain and RW-2 Rashmi Aggarwal, i.e., respective respondents in person.

### **Submissions**

9. Mr. Rajesh Banati, learned counsel for the petitioners, made the following submissions:

a) The Will dated 07.06.2005 was duly executed by the testatrix and is a



registered document. PW-4, Daulat Ram, produced the summoned registration records and confirmed its registration.

- b) Both attesting witnesses, PW-2 Anand Gupta and PW-3 Vivek Anand, have deposed that the testatrix had executed the Will in their presence while in a sound and disposing state of mind, thereby proving proper attestation. The testimonies of the attesting witnesses, along with the registration and production of the original Will, fully satisfy the requirements of Section 63 of the Act and Section 68 of the Indian Evidence Act, 1872.
- c) Respondents No. 2 and 3 have raised baseless objections solely to delay the proceedings, as is evident from the costs imposed on them by the Court on 30.08.2022.

10. In light of the above, Mr, Banati submitted that issue regarding the genuineness and due execution of the Will stands proved in their favour.

11. *Per contra*, the following submissions have been made on behalf of Respondent No. 3 by Mr. Vineet Mehta, learned counsel.

- a) The Will is fabricated and surrounded by suspicious circumstances as the testatrix did not understand English, the language in which the Will is drafted, and there is neither any recital nor evidence to show that its contents were read over or explained to her.
- b) The Sub Registrar failed to ascertain whether the testatrix comprehended the document at the time of registration. The testatrix was allegedly misled into signing blank papers under the pretext of paying house tax, which were later converted into the impugned Will.



- c) The complete exclusion of Respondents No. 2 and 3, despite their close familial relationship with the testatrix, is argued to be unnatural.
- d) The active role of Petitioner No. 1, who is a primary beneficiary under the Will, is characterized as a primary suspicious circumstance vitiating the document.
- e) There are errors in property descriptions and contradictions in the witnesses' testimonies, which, according to him, undermine the Petitioners' case.
- f) The present petition is not maintainable under Section 276 of the Act, as the Will does not name any executor, and therefore the Petitioners ought to have sought letters of administration instead of filing a probate petition.

12. Mr. Varun Kumar, learned counsel for respondent No.2, also reiterated the aforesaid submissions.

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

14. At the outset, it is noted that while granting a Probate, the Court is not concerned with the title of the parties and in doing so, it is not deciding the disputes relating to the title, if any. Reference can be made to the decision of the Supreme Court in the case of *Elizabeth Antony vs. Michel Charles John Chown Lengera*<sup>1</sup>. It is settled law that the grant of probate or letters of administration neither confers any title to property nor tantamount to any expression by the Court on the question of title. It merely enables the

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<sup>1</sup> (1990) 3 SCC 333.



administration of the estate of the deceased.

15. The Supreme Court in the case of *Delhi Development Authority vs. Vijaya C. Gurshaney (Mrs) and Another*<sup>2</sup> has also held that a testamentary Court, whilst granting Probate or Letter of Administration, does not even consider, particularly in uncontested matters, the motive behind the execution of a testamentary instrument. A testamentary Court is only concerned with finding out whether or not the testator executed the testamentary instrument out of his own free will. As such, it is not the weight of the question before the Court that makes the job difficult, rather, what makes it difficult is the fact that this determination of free will of the testator is to be carried out in the absence of the testator, who is the author of the document, which gives room to the interested parties to question the element of free will of the deceased testator.

16. Furthermore, while relying on a series of its earlier decisions, the Supreme Court in the case of *Meena Pradhan & Ors v. Kamla Pradhan & Anr*<sup>3</sup>, 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;*

*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*

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<sup>2</sup> (2003) 7 SCC 301

<sup>3</sup> (2023) 9 SCC 734



*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."*

17. Upon a comprehensive consideration of the decision noted hereinabove, it emerges without ambiguity that the jurisdiction exercised by a testamentary Court in a probate proceeding is confined to examining the genuineness and due execution of the Will, along with the Will being the last Will. It does not extend to adjudicating the disputed questions of title or ownership. Insofar as the mode of proof of a Will is concerned, there is a



slight variation as compared to other documents as distinct evidentiary principles are attracted for proving a Will. Ordinarily, a document is proved by the author of the document. However, the said rule is not applicable to Wills for the simple reason that the author is no more, to step into the witness box to prove his document. Therefore, in order to prove a Will, the prescribed mode requires at least one of the attesting witnesses to step into the Court for proving due execution of the Will by the testator in his presence, as well his own attestation in the presence of the testator. If one of the attesting witnesses successfully proves due execution, the Court is not required to call the other witness, unless judicial conscience demands so. For, the ultimate test is whether the Will has been proved to the satisfaction of the Court. The initial burden lies on the propounder of the Will to establish the essential elements underlying its valid execution, namely, that the testator had the requisite testamentary capacity, the Will was executed voluntarily, and attested in the manner prescribed by law. Once these foundational facts are established, the onus shifts upon the caveator/objector who alleges vitiating factors such as fraud, coercion, undue influence, or lack of free will. Having said that, it needs to be underscored that vitiating factors must be alleged on a valid basis and must not be a product of the *“fantasy of the doubting mind”*.

18. In the instant case, the petitioner has examined PW-2 and PW-3, who are the attesting witnesses. They deposed that the testatrix executed the Will in their presence and that they attested the Will in the presence of the testatrix. The evidence of at least one attesting witness (who is alive and capable of giving evidence) satisfies the requirement under Section 68 of the Indian Evidence Act, 1872. There is no credible reason to doubt his



testimony. Furthermore, the Will is registered in the Sub-Registrar's office and the registration record has been produced in evidence by PW-4 and duly proved. Needless to observe, the registration of a Will lends it greater credibility and leads to an inference in favour of due execution and authenticity of the Will. The respondents have failed to rebut the evidence of the PWs or to impeach the credibility thereof.

19. Thus, the Court is satisfied that the Will is duly registered and executed.

20. Moreover, no other Will of the testatrix has been propounded by the parties. Thus, the Will dated 07.06.2005 is also the last Will and testament of the testatrix.

21. However, the Respondents allege that the testatrix did not understand English and the Will was not read over or explained to her. However, both RW-2 and RW-3, despite initially describing the testatrix as "completely illiterate," admitted in cross-examination that she used to sign in English. Their explanation, that she did not know English, undermines the foundation of their objection and fails to establish any real incapacity on the part of the testatrix. The admission on the part of RWs indeed strikes at the foundation of this objection and strengthens the plaintiffs' case.

22. While the Respondents claim deception and assert that the testator's signatures were procured on blank papers, neither RW-2 nor RW-3 has produced any contemporaneous complaint, witness, or documentary proof supporting such allegations. RW-2 categorically admitted that the testator never complained of coercion or threat during her lifetime. RW-3 similarly conceded that there was no occasion for any such complaint. These



admissions directly negate the allegations of fraud, coercion, or undue influence.

23. The omission of Respondents No. 2 and 3 from the Will may require scrutiny, but the law mandates that suspicious circumstances must be real, germane and supported by credible material. Here, the Respondents' testimony is riddled with inconsistencies, and their allegations, such as claims regarding locker misuse, jewellery or properties, are unsupported by any complaint or document, thereby leaving a reasonable possibility of the objections being afterthought. It is also well settled that in matters of testamentary disposition, particularly where disputes arise amongst legal heirs, the very act of executing a Will, duly signed and attested, inherently signifies the testator's intention to depart from the normal course of intestate succession and to consciously exclude certain heirs from the natural line of inheritance. Mere exclusion of certain legal heirs does not render the Will as suspect or unnatural, and the objectors must be able to support the claim of unnatural disposition with credible material. Further, it is trite that the Court is not required to scrutinize the wisdom of the testator in excluding certain legal heirs, as long as the genuineness and due execution of the Will are proved and unnatural circumstances, if any, are not found. The decision of a person to execute a Will is inherently personal and is based on personal experiences spanning across a lifetime, which may not always find expression in the Will. Therefore, to call such a deeply personal testamentary act as unnatural, the party must discharge a reasonable burden of proof, which the respondents have failed to discharge.

24. In contrast, the Petitioners have discharged the statutory burden by producing the original registered Will, examining attesting witnesses, and



proving registration through PW-4. Both RW-2 and RW-3 admitted they were not present at the time of execution or registration, thereby rendering their challenge devoid of probative value.

25. The minor discrepancies pointed out by the Respondents regarding property details do not establish forgery or fabrication. Their assertions regarding ownership, payments, and alleged misappropriation remain wholly uncorroborated. Furthermore, any dispute pertaining to the right of the testatrix in the properties mentioned in the Will cannot be adjudicated by this Court while exercising testamentary jurisdiction. All rights and contentions of the parties in that respect are kept open.

26. Moreover, the objection raised on behalf of the respondents that the present petition is not maintainable under Section 276 of the Act, on the ground that the Will does not expressly name any executor, is devoid of merit.

27. A careful reading of the Will demonstrates that, although the testatrix may not have used the precise or formal expression "I appoint X as executor," the Will nonetheless contains a clear reference to the existence of an executor and specifies that "*the said executor will have full power to alienate and transfer the same in any manner in which the executor chooses.*" This clause unequivocally indicates the testatrix's intention to appoint an executor and to vest such executor with full authority to administer and deal with the estate.

28. It is a well-settled principle that strict or technical language is not required for the appointment of an executor. What is material is the intention of the testator to confer upon a person the duty of administering the estate



and giving effect to the dispositions made under the Will. Such intention can be gathered from the tenor of the document, and an executor may be held to be appointed by necessary implication.

29. In the present case, the Will not only identifies beneficiaries but also expressly mentions an executor vested with complete authority to deal with the estate. The reference to “the said executor” is not ambiguous. It presupposes that the beneficiaries under the Will are also to act as implied executors. Therefore, the contention that the petitioners ought to have sought letters of administration instead of probate is untenable.

30. Accordingly, the singular Issue is answered in the affirmative. The Will dated 07.06.2005 is held to be valid, duly executed and registered.

31. Additionally, the Valuation report in respect of property bearing flat No. 29, Dakshineswar Building, 10 Hailey Road, New Delhi–110001 has been duly received.

32. Therefore, the Probate of the Will is allowed in favour of the Petitioners. The petitioners are directed to file the requisite Court fee and bond with the registry. Subsequent thereto, the registry shall issue the probate of the Will dated 07.06.2005, subject to the valuation of other properties mentioned in the Will.

33. With the aforesaid directions, the instant petition stands allowed. The application(s), if any, stand disposed of.

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

**DECEMBER 16, 2025/aks**