



2025:DHC:3089



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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

+ **TEST.CAS. 65/2010 and I.A. 3139/2022, I.A. 12210/2022, I.A. 14513/2022, I.A. 15210/2022, I.A. 18576/2023, I.A. 5441/2024**

SHRI VINAY KHANNA,
SON OF LATE SHRI KALA RAM KHANNA,
R/O 78, SUNDER NAGAR,
NEW DELHI-110003

....PETITIONER

(Through: Mrs. Mala Goel and Mr. Parvinder, Advocates along with petitioner.)

Versus

- 1. STATE**
- 2. SMT. USHA KHANNA,**
WIDOW OF LATE SHRI VIJAY KHANNA,
R/O 78, SUNDER NAGAR,
NEW DELHI-110003
- 3. SHRI SIDDHARATH KHANNA,**
SON OF LATE SHRI VIJAY KHANNA,
R/O 78, SUNDER NAGAR,
NEW DELHI-110003
- 4. MS. MAHIMA KHANNA,**
DAUGHTER OF LATE SHRI VIJAY KHANNA,
R/O 78, SUNDER NAGAR,
NEW DELHI-110003
- 5. MRS. KASTURI SETH,**
WIFE OF SHRI SHIV KUMAR SETH,



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DAUGHTER OF LATE SHRI KALA RAM KHANNA,
R/O C-194, DEFENCE COLONY,
NEW DELHI

6. SMT. SUKLA KAPOOR,
WIFE OF SHRI SHASHI MOHAN KAPOOR,
DAUGHTER OF LATE SHRI KALA RAM KHANNA,
R/O 24, ABDUL GAFFAR KHAN ROAD,
WORLI, BOMBAY.

7. SMT. SUSHMA CHADHA,
WIFE OF SHRI VIJAY CHADHA,
DAUGHTER OF LATE SHRI KALA RAM KHANNA,
R/O 12/9, EAST PATEL NAGAR,
NEW DELHI-110008.

ALSO AT:
B-9, GROUND FLOOR,
NEW FRIENDS COLONY,
NEW DELHI.

....RESPONDENTS

*(Through: Ms. Rahella Khan, Advocate for D-2 & 4 (Thr. VC).
Mr. Sandeep P. Agarwal, Senior Advocate with Mr. Rajesh Pathak,
Ms. Tanya Chanda, Advocates for R-3.)*

% Reserved on: 07.04.2025
Pronounced on: 25.04.2025

JUDGMENT

I.A. 4886/2025 [By Petitioner – seeking declaration of Attesting Witness - P.W.1 to Registered Will dated 08.08.1983 as hostile witness and to cross-examine P.W.1]

1. The instant testamentary case has been filed praying for grant of Letters of Administration [LOA], upon the Registered Will dated 08.08.1983, executed by the mother of the petitioner, late Mrs. Indra



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Khanna, since deceased on 10.1.2007.

2. Ms. Mala Goel, learned counsel for the applicant-petitioner submits that late Mrs. Indra Khanna executed the registered Will in her parental home located in Amritsar. According to the applicant-petitioner, the two brothers of late Mrs. Indra Khanna, late Mr. Jagdish Chand Mehra and Mr. Raghbir Chand Mehra [PW-1 herein], were then residing there. The Will was attested by her younger brother, Mr. Raghbir Chand Mehra, and Ms. Dolly Mehra, the daughter-in-law of late Mr. Jagdish Chand Mehra. Additionally, Mr. Satnam Singh, Advocate, also signed the Will as an attesting witness at the time of its registration.

3. The testator, late Mrs. Indra Khanna, passed away on 10.01.2007. The instant testamentary petition was filed by the applicant-petitioner for the grant of LOA in respect of the aforesaid registered Will dated 08.08.1983, and the matter is presently at the stage of recording the evidence of the petitioner. It is submitted that along with the petition, the attesting witness, Mr. Raghbir Chand Mehra [PW-1], filed his affidavit dated 31.05.2010, sworn at Amritsar, in compliance with Section 281 of the Indian Succession Act, and Chapter XXIX of the Delhi High Court [Original Side] Rules.

4. The applicant-petitioner further submits that the objections to the Will were filed by respondent no.3, Mr. Siddharth Khanna, initially on 17.05.2018, and re-filed on 01.08.2022, alleging *inter alia* that the Will was a fabricated and manufactured document, purportedly created by the applicant-petitioner after the demise of Mrs. Indra Khanna. She submits that respondent no.3 had also filed I.A. No. 11818 of 2022 under Order XXVI



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Rules 2 and 4 read with Section 151 CPC, praying that the evidence of the attesting witness, Mr. Raghbir Chand Mehra [PW-1], be recorded at the earliest through a Local Commissioner, having regard to the advanced age and medical condition of PW-1.

5. The applicant-petitioner further submits that respondent no.3 filed I.A. No. 12210 of 2022 seeking that his objections dated 17.05.2018 be taken on record. The said application was allowed *vide* order dated 29.11.2023 and the objections were formally taken on record.

6. The applicant-petitioner further submits that pursuant to I.A. No. 5441 of 2024 filed by the petitioner, the Court, *vide* order dated 07.03.2024, directed that the evidence of PW-1, who is located at Amritsar, be recorded through video conferencing. It is submitted that on 25.04.2024, the statement/examination-in-chief of PW-1 was partially recorded by the Local Commissioner through video conferencing. However, due to poor audibility, lack of clarity, and inadequate sound, the proceedings could not be completed and had to be suspended.

7. The applicant-petitioner submits that when the petitioner visited PW-1 at the residence of the other daughter of PW-1 in Amritsar on 18.04.2024, he requested PW-1 to sign the prepared affidavit. PW-1 took the affidavit but declined to return it to the applicant-petitioner. The applicant-petitioner states that, owing to the evident hostility of PW-1, he had to be summoned for oral examination instead of filing an affidavit under Order XVIII Rule 4 CPC. The partial examination-in-chief recorded on 25.04.2024 reflects not only his unwillingness to support the case of the applicant-petitioner, but also contradicts the earlier affidavit dated 31.05.2010 filed in support of the



petition.

8. The applicant-petitioner submits that in the third week of January 2025, the applicant-petitioner learnt from reliable sources that PW-1 was in fact present in Delhi and staying with his daughter, Smt. Jyoti Khanna, at C-670, New Friends Colony. The applicant-petitioner went to the said residence on 27.01.2025 and was able to meet PW-1.

9. In view of the above, the applicant-petitioner, through his counsel, sent an email dated 04.02.2025 to the Local Commissioner informing that PW-1 was in Delhi. During a Zoom meeting held on 06.02.2025, it was resolved that the evidence of PW-1 would be recorded on 14.02.2025 in the Delhi High Court.

10. It is submitted that on 14.02.2025, the Local Commissioner convened proceedings in the Video Conferencing Room of the Delhi High Court, and PW-1 appeared. However, instead of proceeding with oral deposition, PW-1 produced an affidavit dated 14.02.2025, purportedly as his examination-in-chief. Learned counsel for the applicant-petitioner submits that she had neither prepared nor seen the said affidavit which has been submitted by the PW-1 before the Local Commissioner, and that it had been brought by the witness on his own accord without consultation. Accordingly, the Local Commissioner adjourned the matter to enable the applicant-petitioner to peruse the affidavit and consider whether any further examination-in-chief was warranted. It is submitted that in view of the decision of the Supreme Court in the case of *Salem Advocate Bar Assn. (II) v. Union of India*¹, the

¹(2005) 6 SCC 344



Local Commissioner who has been appointed for the purpose of recording the evidence does not have the power to declare a witness hostile and thus, has approached the Court.

11. In essence, the case of the applicant-petitioner is that the affidavit dated 14.02.2025 produced by PW-1, and the statement recorded on 25.04.2024, are both inconsistent with his earlier affidavit dated 31.05.2010. The said contradictions, according to the applicant-petitioner, clearly indicate that PW-1 has become hostile, and thus, the applicant-petitioner seeks a declaration of PW-1 as a hostile witness under Sections 154 and 155 of the Indian Evidence Act and further seeks to cross-examine PW-1.

12. Vehemently opposing the submissions advanced by the applicant-petitioner, learned senior counsel for respondent no.3, Sandeep P. Agarwal, assisted by Mr. Rajesh Pathak, learned counsel, submits that the entire endeavour of the applicant-petitioner is aimed at delaying the proceedings and protracting the recording of evidence under one pretext or another, including by way of filing the present application. He submits that, with the consent of parties, this Court *vide* order dated 29.11.2023 allowed the application for appointment of a Local Commissioner to record all evidence within a period of four months.

13. It is pointed out that in the first meeting convened by the learned Local Commissioner on 14.12.2023, it was decided that the evidence of PW-1 would be recorded on 25.01.2024, as PW-1 was expected to be present in Delhi around that time. However, due to his ill health, PW-1 did not travel to Delhi. Consequently, during the meeting held on 25.01.2024, it was mutually agreed that the evidence of PW-1 be recorded at Amritsar on



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06.03.2024 and 07.03.2024. The applicant-petitioner was to take the necessary steps in this regard.

14. Learned counsel for respondent no.3 contends that all arrangements, including air tickets and hotel bookings for his counsel as well as for the learned Local Commissioner, had been completed. However, at the last minute, the applicant-petitioner refused to travel to Amritsar and sought cancellation of the scheduled proceedings. As the applicant-petitioner and his counsel declined to attend the proceedings, the Local Commissioner was left with no alternative but to cancel the said dates. Thereafter, this Court, *vide* order dated 07.03.2024, modified its earlier directions and ordered that the evidence of PW-1 be recorded *via* video conferencing on 25.04.2024 and 26.04.2024 through the facilities available at the Delhi High Court. The said order also directed that a Nodal Officer, accompanied by a Court official carrying the original Will dated 08.08.1983 and the affidavit dated 31.05.2010, be present in Amritsar during the recording. The recording commenced on 25.04.2024.

15. With reference to the proceedings held on 25.04.2024, learned counsel for respondent no.3 submits that the applicant-petitioner sought adjournment on the ground that the responses of PW-1 was not clear and audible. However, he opposed such a request, asserting that the answers of PW-1 were being duly recorded in the presence of the Nodal Officer and all parties. Nevertheless, the applicant-petitioner declined to proceed further, expressing his intent to move an application before the Court for appropriate directions, leading the Local Commissioner to adjourn the matter. He submits that the audio was clear on the said date and the sole reason the



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applicant-petitioner sought to adjourn the matter was due to the fact that the responses rendered by PW-1 are not compatible or palatable to the applicant-petitioner.

16. He further submits that since then, the applicant-petitioner has repeatedly sought cancellation of dates fixed for recording evidence, including 25.11.2024, 26.11.2024, 23.12.2024, and 24.12.2024 on various grounds including stating cataract surgery.

17. Even on 14.02.2025, the applicant-petitioner requested that the scheduled date be cancelled. However, the Local Commissioner rejected the request and proceeded with the matter. On the said date, PW-1, who was present in Delhi, submitted an affidavit as his statement, stating therein that he was 91 years old, uncertain about how long he would live, and unsure as to when his evidence would be concluded. The affidavit dated 14.02.2025 was taken on record by the Local Commissioner with the consent of both parties.

18. Learned counsel for respondent no.3 submits that the affidavit filed by PW-1 on 14.02.2025 clearly indicates that the affidavit dated 31.05.2010 was procured under coercion by the applicant-petitioner at the time of filing of the present petition. He asserts that the affidavit dated 14.02.2025 reflects the true and correct facts as stated by PW-1, and that a witness cannot be declared hostile merely because he speaks the truth or departs from the narrative of the applicant-petitioner. He further submits that although the applicant-petitioner sought an adjournment to peruse the affidavit, he again refused to proceed with the evidence on 24.02.2025 on the ground that the present application, seeking to declare PW-1 hostile, was pending



consideration.

19. It is thus the core contention of respondent no.3 that the applicant-petitioner has become disheartened owing to the refusal of PW-1 to sign the affidavit prepared by the applicant-petitioner, and the filing of another affidavit on 14.02.2025. It is contended that, unable to control or anticipate the testimony of PW-1, the petitioner has adopted dilatory tactics through the filing of a false, frivolous, and mischievous application, solely to stall the completion of evidence. He submits that mere narration of true facts by a witness does not, in law, constitute hostility and thus, prays for the application to be dismissed with costs.

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

21. The entire controversy raised in the present application revolves around contradictory statements allegedly made by PW-1, who is the maternal uncle of the petitioner herein. In order to appreciate the precise nature of the grievance raised by the respective parties regarding the purported contradictions in the testimony of PW-1, it is essential to examine the affidavits dated 31.05.2010 [filed at the institution of the suit] and 14.02.2025 [filed subsequently before the Local Commissioner]. For clarity and ease of reference, the contents of these two affidavits are juxtaposed hereinbelow:-

| <i>Affidavit dated 31.05.2010.</i> | <i>Affidavit dated 14.02.2025.</i> |
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| <i>1. That I am one of the attesting witnesses to the Will dated 8th</i> | <i>A. I am aware of the full facts of the Test Case No.65 of 2010 titled Vinay Khanna Vs. State & Ors. filed against State, Smt. Usha Khanna, Shri Siddharth Khanna, Ms.</i> |



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| <p>August, 1983 executed by late Smt. Indra Khanna, the testator mentioned in the petition titled Vinay Khanna Versus State and others filed before the Hon'ble High Court of Delhi at New Delhi.</p> <p>2. I (Raghbir chand mehra) son of Dr.Karam chand mehra one of the Witnesses to the will and testament of late Shrimati Indra Khanna mentioned in the petition titled vinay khanna versus state & others declare that I was present and saw the said testator late shrimati Indra khanna affix her signature thereto on the said will in my presence and in the presence of other witness shrimati dolly mehra. Mrs dolly mehra and I signed the Will as attesting witness in the presence of the testator and in the presence of each other.</p> | <p>Mahima Khanna, Mrs. Kasturi Seth, Smt Shukla Kapoor and Smt Sushma Chadha seeking Letter of Administration of the Will dated 8th August 1983. Being Attesting Witness of the aforesaid Will Dt8.8.1983, executed by my sister Late Smt. Indra Khanna, I have been called upon by Mr. Vinay Khanna as a witness to prove the Will of my late sister. My evidence has been pending for the 1st 14 years, I am filing the present affidavit as I am growing old and I am not sure till when I would, live, I would request the Hon'ble Court to take my affidavit on record and treat the same as my affidavit of evidence. I state as under:-</p> <ol style="list-style-type: none">1. That I am one of the attesting witnesses of the Will dated 8.8.1983 executed by Smt. indra Khanna, since deceased, who happens to be my real sister.2. That husband of Smt. Indra Khanna had expired on 2.9.1968 and he was survived by his widow Smt. Indra Khanna, two sons namely Vijay Khanna and Vinay Khanna and three daughters namely Kasturi Soth, Shukla Kapoor and Sushma Chadha,3. After demise of my brother in law (Indra's husband, Indra very often used to take advice from me and my elder brother Sh. Jagdish Chand Mehra, a very well reputed and respected businessman of Amritsar.4. That my brother-in-law after his death left behind a residential house in Sundar Nagar, New Delhi which was being used by my sister and her sons Vijay and Vinay with their respective families. Though, my sister was maintaining good health in the year 1983, but because of certain uncertainties experienced by her during her lifetime i.e. losing of her husband at an early age and her elder son suffering from medical and mental disorder, she discussed to divide her property especially the residential house at Sundar Nagar in such a manner that both her sons are able to get equal shares in the said property.5. That sometime in August, 1983; my sister along with her son Vinay came to Amritsar and requested me and my elder brother to be witnesses to a document which would legally entitle her sons to have equal shares in the said residential house.6. Accordingly, it was decided that Indra Khanna will make a Will bequeathing her share in Sundar Nagar house equally in favour of her two sons Vijay and Vinay and the commercial fiat in Connaught Race, N. Delhi would be divided in equal share to her five children. Apart from the |
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two immovable properties, she also decided that her movable assets to be divided amongst her children. Accordingly, it was decided that Vinay Khanna will get a Will typed of her mother as per her wish.

7. On 8.8.1983, I was in my office when I received a telephone call from Vinay informing me that he was at a Lawyer's office and he requested me to come there to sign as witness. On reaching, I was asked to sign as witness on the Will where my sister had already signed, After signing the said document, I left for my office. 8. I had not read the contents of the Will but believed that they were on the basis of what was, discussed at home as mentioned in the preceding paragraphs of this Affidavit.

9. Later, after the demise of my sister, I was contacted by Vinay when he wanted me to sign an affidavit, so that the Will of my sister Indra could be probated.

10. Accordingly I receive a typed copy of an affidavit. After going through the contents of the said affidavit, i called Vinay and told him that para 2 of the affidavit was not correct as neither of us i.e. my sister, Doily and myself signed in presence of each other on the Will of my sister. Infact, neither my sister (indra) nor Dolly were present, when I signed as witness on the said Will. Therefore I returned the said Affidavit without putting my signature on it.

11, However, later Vinay came to Amritsar and persuaded me that this legal manner (legal form) in which the affidavit of the Attesting Witness normally made to prove a Will.

12. Being unaware of the contents of the Will, I agreed to sign the affidavit sent by Vinay just to see that Will of my sister is proved and her property is divided equally between her 02 sons as per her wish.

13. After getting my signature on the said Affidavit Vinay went back to Delhi but after few days, he again came back to Amritsar and requested me to sign one more affidavit on the pretext that there was some mistake in the earlier affidavit and therefore a fresh affidavit is required to be signed by me. Since, I had signed the first affidavit; I showed no reservation in signing the second affidavit.

14. It was much later; I came to know that the Will of my sister was made on completely different lines than what she had wished for. I was shocked, how Vinay had played dirty with his own elder brother who at the time of making of the Will was ill and suffering. My sister had a very soft corner



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| | <p><i>for her elder son Vijay who all through his life was a smart and well mannered person, but unfortunately fell sick and was suffering from mental illness.</i></p> <p><i>15. That the whole purpose of my sister making her Will was to see that the children of her elder son Vijay get, their due share in her estate and are not deprived of anything because of their father's mental health.</i></p> <p><i>16. I was really annoyed with Vinay as he had cheated his mother, his brother & everybody in the family. He played with our emotions only for his greed. I have no sympathy left with Vinay and have told him potto contact me in future, as he is a complete, fraud and I do not wish to be associated with him.</i></p> |
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22. Upon a comparative examination of the two affidavits submitted by PW-1, it is evident that there exist certain factual inconsistencies with respect to the execution and attestation of the Will dated 08.08.1983. In the affidavit dated 31.05.2010, sworn and filed at the institution of the suit in accordance with Section 281 of the Indian Succession Act and Chapter XXIX of the Delhi High Court [Original Side] Rules, PW-1 unequivocally affirmed that he had signed the Will as an attesting witness in the presence of the testator, Smt. Indra Khanna, and in the presence of the other attesting witness. The said affidavit clearly records that the Will was executed by the testator in a conscious and sound state of mind, and in the presence of both attesting witnesses, including the deponent himself, who attested the Will simultaneously and in the presence of each other.

23. Contrastingly, in the subsequent affidavit dated 14.02.2025, submitted before the Local Commissioner, PW-1 has stated that the Will was not signed by the testator in his presence, nor was it signed in the presence of the other attesting witnesses. The affidavit further suggests that the document was presented to him after its execution and that his signature



was obtained separately and not contemporaneously when the testator was attesting the Will.

24. To determine whether the apparent contradictions in the affidavits of PW-1 are sufficient to dislodge the case of the petitioner, it becomes imperative to first examine the legal requirements governing the execution of a valid Will. The present petition, having been instituted under Section 278 of the Indian Succession Act, 1925, must necessarily satisfy the substantive requirements prescribed under Section 63 of the said Act, which governs the execution of unprivileged Wills. Section 63 of the Indian Succession Act reads as under:-

“CHAPTER III.—Of the Execution of unprivileged Wills

63. Execution of unprivileged wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

25. Section 63(c) of the Act stipulates that a valid Will must be attested by two or more witnesses, each of whom must have either seen the testator sign or affix his or her mark to the Will, or seen some other person sign it in



the presence and by the direction of the testator, or must have received from the testator a personal acknowledgment of such signature or mark. It is further required that each attesting witness must sign the Will in the presence of the testator, although it is not necessary that all witnesses be present at the same time, and no particular form of attestation is mandated.

26. This statutory prescription thus envisages two essential components for a valid attestation, first, that the witness either sees the testator sign the Will or receives acknowledgment thereof from the testator, and second, that the witness himself signs the Will in the presence of the testator. These requirements are conjunctive and not merely procedural. They go to the very root of the validity of the testamentary instrument.

27. It is further seen that in *Benga Behera v. Braja Kishore Nanda*², the Supreme Court has held that the attesting witness must categorically affirm in his testimony that he saw the testator sign the Will or received acknowledgment thereof, and that he himself signed in the presence of the testator. The Court held that mere proof of the testator's signature or mark is not sufficient unless the attestation as required by law is also proved. It was further observed that in the absence of any clear evidence of attestation in accordance with Section 63(c), the Will cannot be said to be validly executed.

28. Similarly, in *Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh*³, the Supreme Court reiterated that the onus lies heavily on the propounder to remove all suspicious circumstances and to establish

² (2007) 9 SCC 728



due execution and attestation. The attesting witness must depose to the satisfaction of the Court that the Will was executed in his presence and that he signed the same in the presence of the testator.

29. Further, the Supreme Court in *Jaswant Kaur v. Amrit Kaur*⁴, emphasized that if the attesting witness retracts from his earlier statement and denies having seen the testator sign or having signed in the presence of the testator, the execution and attestation cannot be said to have been duly proved. The evidentiary value of such a witness stands severely impaired.

30. Therefore, in the present case, where the attesting witness PW-1 has materially contradicted his earlier affidavit and introduced doubts regarding the manner of execution and attestation, and where no other independent and reliable testimony exists to affirm the compliance mandated by Section 63(c), the Will cannot be said to have been duly proved in the eyes of law with respect to PW-1. The burden placed upon the propounder has not been discharged.

31. Accordingly, the Court must now examine whether, in light of the divergent versions presented by PW-1 in his affidavits dated 31.05.2010 and 14.02.2025, the attestation requirements under Section 63(c) stand complied with, and if not, whether such inconsistency is of a nature so fundamental as to undermine the legitimacy of the Will propounded by the petitioner.

32. As noted earlier, in the subsequent affidavit dated 14.02.2025 submitted before the Local Commissioner, PW-1 has deposed that the Will was not signed by the testator in his presence, nor was it signed in the

³ (2009) 4 SCC 780



presence of the other attesting witnesses. He further states that the document was presented to him after it had already been signed by the testator, and that his signature was obtained separately, not contemporaneously with the execution of the Will by the testator. This statement, on its face, strikes at the core requirement of attestation under Section 63(c) of the Indian Succession Act, which mandates that each witness must sign the Will in the presence of the testator and after having either seen the testator sign or having received a personal acknowledgment of the same. If the statement of PW-1 in his later affidavit is accepted as correct, it would, at the very least, cast a serious doubt on the compliance with the attestation requirement prescribed under the statute. The variance in the two affidavits goes to the root of the matter and directly impacts the due execution and attestation of the Will and this material inconsistency forms the substratum of the present application seeking a declaration that PW-1 has become a hostile witness.

33. It is seen that the instant application has been filed under Section 154 and 155 of the Indian Evidence Act, 1872. The said provisions read as under:-

“154. Question by party to his own witness. —

1[(1)] The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.

2[(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.]

155. Impeaching credit of witness.—*The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:—*

⁴ (1977) 1 SCC 369



(1) *By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;*

(2) *By proof that the witness has been bribed, or has [accepted] the offer of a bribe, or has received any other corrupt inducement to give his evidence;*

(3) *By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;*

Explanation. — A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Illustrations

(a) *A sues B for the price of goods sold and delivered to B.*

C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered goods to B.

The evidence is admissible.

(b) *A is indicted for the murder of B.*

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.”

34. Whereas the relief sought in the present application is for declaring PW-1 as a hostile witness, it is necessary to clarify at the outset that the expression “*hostile*” does not find mention in the text of Section 154 of the Indian Evidence Act, 1872. The section merely empowers the Court, in its discretion, to permit the party who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. The true test is not whether the witness is “*hostile*” in a colloquial sense, but whether, from his testimony, it appears that he is not desirous of telling the truth to the Court or is suppressing material facts contrary to what he was expected to depose.



35. The power under Section 154 is unqualified and intended to be exercised in the interest of justice. It is well settled that the discretion to permit cross-examination of the own witness is not circumscribed by any rigid formula, nor is it contingent upon the witness openly exhibiting hostility. A witness may, without overt hostility, subvert the case of the party calling him by prevaricating, suppressing facts previously affirmed, or offering evidence contrary to prior statements or expectations. In *Sat Paul v. Delhi Administration*⁵, the Supreme Court emphasized that the discretion must be exercised liberally, where the witness adopts an attitude adverse to the party who called him.

36. In the present case, a comparison of the affidavit dated 31.05.2010, sworn by PW-1 in support of the petitioner, with his later affidavit dated 14.02.2025, reveals a clear and material contradiction as to the attestation of the Will in question. While the earlier affidavit affirms that PW-1 witnessed the testator sign the Will in the presence of the other attesting witness and signed the same in her presence, the later affidavit states to the contrary, suggesting that he did not witness the execution and that his signature was procured independently thereafter.

37. The Supreme Court in *Gura Singh v. State of Rajasthan*⁶ and *Rabindra Kumar Dey v. State of Orissa*⁷ has held that the Court must be vigilant in identifying witnesses who, under a façade of neutrality, attempt to suppress the truth or injure the case of the party who called them. The right to cross-examine such a witness is essential for eliciting the truth.

⁵ (1976) 1 SCC 727



38. In the facts of the present case, PW-1's conduct and shifting stance, when considered in the backdrop of his relationship with the petitioner and his prior affidavit, strongly suggest that he is attempting to suppress or subvert material facts. Accordingly, this Court finds it just and necessary to permit the petitioner to put questions to PW-1 under Section 154 of the Indian Evidence Act.

39. Thus, without declaring PW-1 as a "hostile" witness, this Court deems it appropriate, in the exercise of its discretion under Section 154 of the Indian Evidence Act, to permit the petitioner to cross-examine PW-1 in view of the material divergence in his affidavits and the apparent inconsistency in his testimony. With the aforesaid observations, the instant application stands disposed of.

TEST.CAS. 65/2010 and I.A. 3139/2022, I.A. 12210/2022, I.A. 14513/2022, I.A. 15210/2022, I.A. 18576/2023, I.A. 5441/2024

1. List before the concerned Joint Registrar on 05.08.2025, for further proceedings in accordance with the extant rules.
2. Let the matter be listed before the Court on the date to be assigned by the concerned Joint Registrar.

**(PURUSHAINDRA KUMAR KAURAV)
JUDGE**

APRIL 25, 2025

sp

⁶(2001) 2 SCC 205

⁷(1976) 4 SCC 233