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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 20<sup>th</sup> May, 2025*

+ CM(M) 623/2025 & CM APPL. 19764-19765/2025  
DEEPAK KUMAR SINGH

.....Petitioner

Through: Mr. Vishwendra Verma and Ms  
Shivali, Advocates.

versus

YOGENDRA PAL SINGH AND ORS

.....Respondent

Through: Mr. Madan Lal Sharma with Ms.  
Tejaswini Verma and Mr. Vikrant  
Malwal, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

1. Petitioner Mr. Deepak Kumar Singh has filed a petition seeking probate.
2. The probate is being sought on the basis of one registered *Will* dated 07.08.2000, left behind by one Mr. Basant Singh.
3. Petitioner Mr. Deepak Kumar Singh, is his grandson.
4. Mr. Basant Singh died on 13.12.2000.
5. The evidence in the abovesaid probate petition is already over and the case is already at the stage of final argument.
6. According to petitioner-Mr. Deepak Kumar Singh, the abovesaid registered *Will* dated 07.08.2000 is the last *Will* left behind by Mr. Basant



Singh.

7. Mr. Yogendra Pal Singh is real son of late Mr. Basant Singh and he has filed a separate suit seeking declaration, possession, damages, mesne profits and injunction.

8. In his such suit, he claimed that his father had expired on 13.12.2000 and in order to settle any dispute and differences among the family members, during his lifetime, he executed his last and final *Will* on 08.12.2000.

9. The declaration, which he seeks, is with respect to the abovesaid *Will*, as in the prayer clause, he has made prayer to the effect that a decree of declaration may be passed in his favour, with respect to the abovesaid *Will* dated 08.12.2000.

10. Such *Will* is, admittedly, not a registered one.

11. The abovesaid suit is also at the stage of final arguments.

12. Appropriately, both the abovesaid matters i.e. probate petition and the abovesaid suit are fixed for final arguments, before the same Court.

13. During the pendency of the abovesaid suit, the petitioner -Mr. Deepak Kumar Singh, who is defendant No.1 in the abovesaid suit, moved an application under Order XXVI Rule 10 A read with Section 151 CPC praying therein that both the *Wills* be sent to FSL for forensic examination.

14. According to petitioner, the authenticity of the *Will* would be possible only, if there is a report in this regard from the Forensic Laboratory.

15. Such application has been dismissed by the learned Trial Court *vide* order dated 03.03.2025.

16. Such order is under challenge.

17. Mr. Vishwendra Verma, learned counsel for petitioner submits that the endeavour is to reach the truth and with that purpose in mind only, the



petitioner had moved the abovesaid application, seeking scientific investigation in the shape of Forensic Report with respect to the signatures appearing on the two *Wills* and the Court should not have disallowed such respect. He also strongly relies upon *Rama Avatar Soni vs. Mahanta Laxmidhar Das and Others:(2019) 11 SCC 415* wherein also the dispute was with respect to the genuineness of a *Will* and the Hon'ble Supreme Court permitted such examination and thereby allowed the application moved under Order XXVI Rule 10A CPC.

18. Indubitably, any such *Will* has to be proved in accordance with law. Any such *Will* comes into picture only after the death of the concerned testator and its execution, where a document is required by law to be attested, has to be proved by calling, at least, one attesting witness.

19. It is submitted that both the *Wills* were attested by attesting witnesses. With respect to the suit in question, both the attesting witnesses have already graced the witness box and with respect to the probate petition, one such attesting witness has been examined. As per Mr. Verma, learned counsel for petitioner, he could not examine the other attesting witness as he, unfortunately, died in the interregnum.

20. This Court has gone through *Rama Avatar Soni* (supra).

21. Undoubtedly, in that case, the request in this regard was allowed by the Hon'ble Supreme Court but fact remains that the abovesaid petition was rather a petition filed under Section 263 Indian Succession Act, 1925 i.e. revocation or annulment of a probate or *Letters of Administration* .

22. Here the situation is different as the petitioner, merely seeks probate and the learned Trial Court is not seized with any petition seeking annulment or revocation of the probate already granted.



23. Naturally, the parameters of evaluation, with respect to the grant of probate and annulment would be, markedly, different and while considering any such petition, which seeks annulment of probate already granted by the Court, the Court can always, wherever it finds necessary and imperative, seek scientific investigation.

24. Moreover, the order in *Rama Avatar Soni* (supra) was passed, keeping in mind the peculiar facts of said case and it cannot be said that in every case, where probate is sought, it is mandatory and imperative for any probate Court to seek scientific investigation and then only to pass final order.

25. Law in this regard is well-settled. If there is any suspicious circumstance shrouding the execution of Will, the petitioner herein can always draw attention of the Court to such circumstances and the Court can then take appropriate decision, keeping in mind any such suspicious circumstance, pointed out by any such litigant.

26. Both the cases are already at the final stage and the Court can always minutely, go through the testimony and deposition of the attesting witnesses and can, thereafter, come to appropriate conclusion and, in such a peculiar backdrop, there does not seem to be any requirement of ordering scientific investigation under Order XXVI Rule 10A CPC.

27. Moreover, the endeavour of the petitioner is, merely, to send both the *Wills* to FSL and then to have an opinion from FSL to the effect as to which *Will* contains the genuine signatures. He, somehow, feels that the *Will* on which he relies upon is genuine *Will* and contains genuine signatures of the testator. Such contention is not appropriate. If at all any Court feels that any document is required to be sent for forensic examination, it, generally, sends along admitted signatures of any such executant, for just and proper



comparison. There is no such request in the present matter and, therefore, the outcome would be of no use if the two *Wills* are directed to be compared, *inter se*.

28. Be that as it may, this Court does not find any reason to interfere with the order passed by the learned Trial Court which does not contain any illegality or perversity, necessitating invocation of supervisory powers under Article 227 of Constitution of India.

29. Petition stands dismissed.

30. Pending application also stand disposed of in aforesaid terms.

**(MANOJ JAIN)**  
**JUDGE**

**MAY 20, 2025/sw/JS**