



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

% **Judgment reserved on : 16 April 2025**
Judgment pronounced on: 06 May 2025

+ FAO 250/2013

SMT. BIMLA DEVI

.....Appellant

Through: Mr. Alok Kumar, Sr. Adv.
with Ms. Manisha A. Narain,
Mr. Amit Kr. Singh and Mr.
Manan Soni, Advs.

versus

THE STATE & ORS.

.....Respondents

Through: Mr. Pankaj Batra, Adv. for R-
2 along with R-2 in person

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant has preferred this appeal under Section 299 of the Indian Succession Act, 1925 [**“the Act”**] against the judgment and order dated 28.02.2013 passed by learned Additional District Judge-02, West District, Tis Hazari Courts, Delhi [**“Probate Court”**] whereby the probate has been granted to the respondent No. 2/Smt. Saraswati Devi of the will dated 24.04.2001.

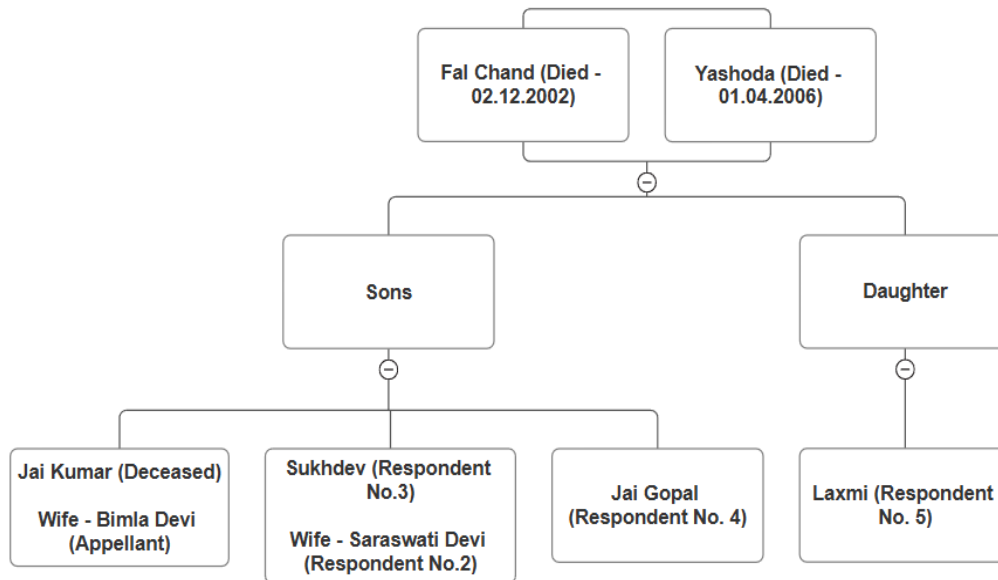
FACTUAL BACKGROUND

2. Shorn of unnecessary details, the appellant, Smt. Bimla Devi, is the widow of Mr. Jai Kumar, who was the son of the deceased testator, Mr. Fal Chand. The deceased testator died on 02.12.2002 at



his residence bearing DDA Janta Flat No. A-5/B-58B, DDA Janta Flats, Paschim Vihar, New Delhi-110063 [“**subject property**”].

3. The Family Tree of the testator/Mr. Fal Chand is as hereunder:



4. During his lifetime, Sh. Fal Chand/deceased testator was allotted the subject property and the deceased made and executed the Will dated 24.04.2001, which was duly notarized. The deceased testator had bequeathed all his rights in respect of the aforesaid property in favour of his wife Smt. Yashoda and after her demise, the subject property was to devolve in favour of the respondent No. 2/Saraswati Devi as sole legatee. It is stated that Smt. Yashoda died on 01.04.2006.

5. Eventually, the respondent No. 2/Sarswati Devi filed for probate of the Will *vide* Probate Petition 64/10/2008, asserting that there was no legal impediment in granting of the relief as prayed for in the petition and it has been prayed that the Probate/Letter of



Administration in respect of the estate left by the deceased and mentioned in the Will dated 24.04.2001 may be granted in her favour.

PROCEEDINGS BEFORE THE LEARNED PROBATE COURT:

6. The learned Probate Court based on the pleadings of the parties, framed the following issues:

- i. Whether Will dated 24.4.2008 executed by Sh. Fal Chand is genuine, legal and is his last Will executed in sound disposing mind? OPP.
- ii. Whether petitioner is entitled for Probate/Letter of Administration, as prayed for? OPP.
- iii. Relief.

7. During the course of trial, the respondent No.2/petitioner examined herself as PW-1. She has also examined PW-2/Sh. Dinesh and PW-3/Sh. Brijesh Kumar. On the contrary the appellant/Smt. Bimla has examined herself RW-1, thereafter, no witness was examined on behalf of the respondent.

8. PW-2 deposed that the deceased testator, his uncle, had called him on 24.04.2001 to witness the execution of the Will at his residence. He stated that the Will was executed in a sound state of mind and without any external pressure and that he signed the document in the presence of the deceased and the other attesting witness. He identified his and the deceased's signatures on the Will and affirmed that the execution was voluntary. His credibility remained intact despite cross-examination by respondents No. 3 to 5.

9. PW-3/Brijesh Kumar, the second attesting witness, corroborated PW-2's testimony. He affirmed through an affidavit (Ex. PW-3/1) and



oral deposition that he too was called by the deceased to witness the Will's execution. Along with PW-2 and the deceased, he went to the Sub-Registrar's office, where the Will was executed. PW-3 confirmed the mental soundness and free will of the deceased at the time of execution and denied all allegations of forgery during cross-examination. He also stated that he read the Will before signing and that attestation occurred before lunch.

10. The then respondent/objector contended that the deceased testator used to sign with a thumb impression and, therefore, could not have signed the Will. However, this argument was rejected as RW-1/Smt. Bimla/appellant, admitted in her cross-examination that the deceased testator was able to write Hindi and despite experiencing hand tremors due to Parkinson's disease, was otherwise in sound health.

11. Further, the then respondents/objectors challenged the testamentary disposition made in the Will, asserting that under Section 14(1) of the Hindu Succession Act, 1956¹, the deceased's wife, Smt. Yashoda Devi, became the absolute owner of the property upon his death. It is contended that since she died intestate, her legal heirs should inherit the property. However, this argument was refuted with

¹ 14. Property of a female Hindu to be her absolute property.— (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.



reliance on Section 14(2) of the Hindu Succession Act, 1956², which specifically excludes the property acquired through a Will that prescribes a restricted estate. Therefore, the terms of the Will dated 24.04.2001 remained valid, and the property would devolve upon the respondent No.2/petitioner.

12. Consequently, the said petition was allowed and the relevant paragraphs from the judgment of the learned Probate Court are reproduced herein:

“16... Ld. counsel for the respondent/objector has relied upon the case law cited as AIR 1977 SC 1944, AIR 1996 SC 869, AIR 1996 SC 1697 & AIR 2001 SC 3062, however the said case law is not applicable in the present case as the fact and circumstances of the present case are different from the fact and circumstances of the cases discussed therein and in my considered opinion, the aforesaid case law is not of any help to the respondent/objector in this case. Hence, in view of the above testimonies of PW-2 & PW-3, it is evident that Will (Ex. PW-1/A) of the deceased Sh. Fal Chand has been proved on record in accordance with law by the petitioner. It is being alleged on behalf of respondents that the above said Will was forged, however respondents, have not been able to prove the said fact on record. On the other hand, in view of the testimonies of PW-2 & PW-3, the petitioner has been able to prove on record that aforesaid Will dated 24.04.2001 (Ex. PW-1/A) was executed by Sh. Fal Chand and that it was his last, genuine, valid and duly executed Will.

It is pertinent to note that petitioner Smt. Saraswati Devi has been named as Executor in the above said Will dated 24.4.2001 (Ex. PW-1/A) and as such she is entitled to the grant of probate in accordance with the provisions of Section-222 of Indian Succession Act, which provides that probate shall be granted only to an Executor, appointed by the Will.

Thus, in view of the above discussion and observations, the issue nos. 1 & 2 are decided in favour of the petitioner and against the respondents.”

² 14 (2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.



SUBMISSIONS ON BEHALF OF THE PARTIES: -

13. Learned senior counsel for the appellant, Mr. Alok Kumar, argues that the complete exclusion of the sons, a daughter, and the widow of the predeceased son from the Will itself raises serious suspicion. Reliance has been placed on the Supreme Court judgment **Kavita Kanwar v. Pamela Mehta³ and Rama Bai Padmakar Patil v. Rukmini Bai Vishnu Vekhande⁴**.

14. Further, it is contended on behalf of the learned counsel for the appellant that the respondent No.2/Smt. Saraswati Devi, admitted in her affidavit that the deceased had surviving legal heirs, including herself, the deceased's wife, two sons, a daughter, and the widow of the predeceased son. She stated that her family was taking care of the deceased, but failed to explain why her husband, who allegedly cared for the testator, was excluded from inheritance, or why other natural heirs were omitted.

15. The learned counsel for the appellant also raised concerns regarding the credibility of the attesting witnesses. PW-2/Dinesh Chand, is the real brother of the respondent No.2/petitioner, and PW-3/Brijesh Kumar, is a family friend of the testator's son. Their close relations to the beneficiary undermine their neutrality. Furthermore, there appears to have been an attempt to obscure these relationships, as PW-2 did not fully disclose his relation to the respondent No.2/petitioner, and both witnesses gave contradictory statements about knowing each other.

³ (2021) 11 SCC 209

⁴ AIR 2003 SC 3109



16. It is submitted by learned counsel of the appellant that the testator was reportedly suffering from Parkinson's disease, which caused hand tremors, raising doubts about his ability to sign documents. While it was not directly disputed that the testator signed the Will, the suggestion that he normally used thumb impressions due to his medical condition casts further doubt on the authenticity of the signature on the Will.

17. It is highlighted by the learned counsel for the appellant that the Will was attested by a Notary Public but not formally registered. There are no notarial stamps, no signature or name of the drafter, and no record that the testator understood or approved the contents of the Will. This lack of formalities undermines the credibility of the execution process. Also, there is no evidence as to who drafted the Will or under whose instructions. While PW-2 claimed it took three hours to draft, PW-3 claimed to have stood outside during drafting. Neither provided any information about the drafter. The Will is also in English, a language the testator reportedly did not understand, and there is no proof the contents were read out or explained to him in a language he knew.

18. Lastly, it is submitted on behalf of the appellant that both attesting witnesses stated that they visited the Sub-Registrar's office with the deceased testator, but the Will was not registered there. They also stated the attestation was done 'before lunch', which contradicts PW-2's claim that it took three hours to draft the Will. No explanation has been provided for this inconsistency or for why the Will was not



registered despite the visit to the Sub-Registrar's office. These discrepancies further cast doubt on the genuineness of the Will.

19. *Per Contra*, learned counsel for the respondents argued that the appellant failed to plead or produce any evidence in the reply to the probate petition to suggest that the deceased testator was of unsound mind or suffering from Parkinson's disease. The claim of Parkinson's was introduced only during the petitioner's evidence and was unsupported by any documents. Moreover, the petitioner admitted in cross-examination that she had no knowledge of the testator's documents, no medical records, and no awareness of any Will during the testator's lifetime.

20. It was contended on behalf of the respondent No. 2 that the objections raised in the appeal that the Will does not explain exclusion of other heirs or that it deviates from natural succession, were not part of the original reply and thus are not maintainable. The respondent submitted that the allegation of interested witnesses is vague. The credibility of the witnesses was not shaken during the trial. No objection was taken at the time of recording their statements, and it is well settled that even a beneficiary can validly attest a Will, as held in **Anand Burman v. State**⁵.

21. Learned counsel for the respondents argued that there is clear and un rebutted evidence from attesting witnesses PW-2 and PW-3 that the testator had called them to witness the Will and expressed his intention to bequeath the subject property. The argument that there is

⁵ (2012) 6 ILR (Del) 152



no mention of who drafted the Will is immaterial as the execution and intention were proved through reliable testimony.

22. Further, learned counsel for the respondent submitted that the testator's wife Yashoda was given a life interest in the flat, and after her death, the same flat was bequeathed to respondent No.2/Smt. Saraswati Devi. Section 14(2) of the Hindu Succession Act, 1956 allows for restricted estate when the property is given under a Will, as opposed to absolute ownership under Section 14(1) of the Hindu Succession Act, 1956. Hence, the bequest was valid and enforceable. The respondent submits that the argument regarding the absence of notarial stamps or proper attestation by a Notary was termed irrelevant. The respondent emphasized that it is the proper execution of the Will, not notarization, that is required under law. Since both attesting witnesses deposed that the testator signed the Will in their presence and was of sound mind, the Will stands duly proved.

23. It was contended on behalf of the respondent that the probate petition was filed within three years of the death of Yashoda in 2006 and thus was within limitation. No such objection was raised in the written statement, and even otherwise, it would not be sustainable. The objection that PW-1 exhibited the Will despite not witnessing its execution was dismissed by pointing out that formal proof was completed through PW-2 and PW-3, who attested the Will and confirmed the testator's intentions. The mere marking of the document does not affect its validity, especially when it is otherwise duly proved.



ANALYSIS AND DECISION

24. I have given my thoughtful consideration to the submissions advanced by the learned counsel for the parties at the bar and I have also perused the relevant record of the case.

25. At the outset, this Court has no hesitation in holding that the present appeal is bereft of any merits. The fundamental issue before this Court is to answer whether the Will dated 24.04.2001 (Ex.PW-1/A) was duly executed by the testator/Mr. Fal Chand in a sound disposing of state of mind and in accordance with law? This would certainly call for examining and re-appreciating the evidence led on the record by the parties before the learned Probate Court so as to ascertain whether the Probate in respect of the Will had been rightly granted in favour of respondent No.2/Smt. Saraswati Devi.

26. Firstly, it would be apposite to reproduce Section 63 in Chapter-III of the Act, which provides the manner in which execution of the unprivileged Wills is mandated to be done, which reads as follows:

“63. Execution of unprivileged wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 1 [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.”

27. Explaining the principles governing the adjudicatory process concerning proof of a Will, the legal position was summarized in the case of **Shiva Kumar vs. Sharanabasappa**⁶ wherein it was held as under:

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

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

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

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

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

12.5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the

⁶ (2021) 11 SCC 277



will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

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

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

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

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

28. In view of the aforesaid proposition of law, reverting to the instant matter, on re-appreciation of the evidence led on the record, this Court finds that both the attesting witnesses, namely PW-2/Mr. Dinesh Chand and PW-3/Mr. Brajesh Kumar have categorically



deposed that they were personally present at the time of attestation and execution of the Will. Although, both were cross-examined at length by the learned counsel for the appellant, their testimonies remained unshaken, consistent, credible and affirmed the voluntary nature of the execution. In summary, the defence is woefully unable to bring about any contradiction in their cross-examination that would raise a material doubt on their credibility or authenticity.

29. Secondly, the plea by the learned counsel for the appellant that the deceased-testator had been suffering from Parkinson's disease has no substance since RW-1/appellant in her cross-examination acknowledged that the deceased-testator was not suffering from any medical ailment as such except that at times his hands use to shake "कभी कभी हाथ कांपा करते थे". There is produced no medical evidence to demonstrate that the testator lacked the capacity to understand the nature of the document that he was executing or with regard to his intentions, or as regards the ability to sign the Will. Incidentally, the appellant herself acknowledged in her cross-examination that the testator could write in Hindi, and thus, the deceased testator was enjoying a good health.

30. Thirdly, the plea that the Will was not drafted in a language understood by the testator also has no merit. Both the attesting witnesses categorically affirmed that the contents of the Will were explained and the testator was mentally alert and voluntarily participated in the execution process.



ABSENCE OF REASONS TO EXCLUDE LEGAL HEIRS

31. That brings us to the main plank of the submissions advanced by the learned counsel for the appellant that the execution of the Will is shrouded in suspicion since there was assigned no reason by the testator as to why he was excluding the other close family members from being beneficiaries in his properties by way of the impugned Will. At the outset, the insufficiency or non-assigning of any reasons in the Will by the testator about the exclusion of other legal heirs is by itself not sufficient to invalidate the Will. It is ordained in law that the testator's right to dispose of his property as per his wishes is of paramount consideration. The Supreme Court in the case of **Pentakota Satyanarayana v. Pentakota Seetharatnam**⁷ has categorically held that mere exclusion of natural heirs is not suspicious unless the surrounding circumstances show manipulation or coercion.

32. Another decision by the Supreme Court that can be referred to is **Ramabai Padmakar Patil (D) Through Lrs. v. Rukminibai Vishnu Vekhande (supra)** wherein it was held as under:

“5. Before we advert to the submissions made by the learned counsel for the parties, it will be useful to briefly notice the legal position regarding acceptance and proof of a Will. Section 63 of the Indian Succession Act deals with execution of unprivileged Wills. It lays down that 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. It further lays down that the Will shall be attested by two or more witnesses, each of whom has seen the testator signing or affixing his mark to the Will or has seen some other person sign the Will, in the presence and on the direction of the testator and each of the witnesses shall sign the

⁷ (2005) 8 SCC 67



Will in the presence of the testator. Section 68 of the Evidence Act mandates examination of one attesting witness in proof of a Will, whether registered or not. The law relating to the manner and onus of proof and also the duty cast upon the court while dealing with a case based upon a Will has been examined in considerable detail in several decisions of this Court viz. *H. Venkatachala Iyengar v. B.N. Thimmajamma* [AIR 1959 SC 443] , *Rani Purnima Debi v. Kumar Khagendra Narayan Deb* [AIR 1962 SC 567] and *Shashi Kumar Banerjee v. Subodh Kumar Banerjee* [AIR 1964 SC 529] . It will be useful to reproduce the relevant part of the observations made by this Court in the Constitution Bench decision in *Shashi Kumar Banerjee* [AIR 1964 SC 529] which are as under: (AIR p. 531, para 4)

“The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. **The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free.** In such a case the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would



grant probate, even if the will might be unnatural and might cut off wholly or in part near relations.”

6. The relevant facts may now be examined. It is not in dispute that Smt Yamunabai had no son but had seven daughters. The plaintiff-appellant Smt Ramabai became a widow at a very young age during the lifetime of her father. Since then, she was living with her parents and not at the place of her husband or in-laws. It has come in evidence that she was looking after her mother for more than 20 years. The other daughters of Smt Yamunabai are living with their husbands at their respective places. Smt Yamunabai had gone to the Office of the Sub-Registrar, Palghar on 5-4-1976 for the purposes of registration of the Will and she died 3 years and 9 months thereafter on 11-1-1980. The Will was attested by two persons, namely, PW 2 Raghunath Govind Sogale and Shaikh, out of whom the former was examined as a witness in court. There is no dispute regarding these facts. There is nothing more shocking for the parents than the death of a grown-up son or a young daughter becoming a widow. It is most natural for the parents to have the greatest amount of sympathy for their widowed daughter. The defendants have led no evidence to show that Smt Ramabai was getting anything for her sustenance from the family members of her late husband. She was thus entirely dependent upon her own parents. According to Smt Ramabai, her father Madhav died on 6-6-1956, though according to the defendants he died sometime in the year 1957. At any rate at least from 1957 till her death, the mother Smt Yamunabai was being looked after by the plaintiff Smt Ramabai. The defendants who are the other daughters of Smt Yamunabai, are residing at different places with their husbands. In such circumstances, the execution of the Will by Smt Yamunabai in favour of her widowed daughter Smt Ramabai, who was living with her for over 20 years and was looking after her, appears to be most natural and probable.

7. The main reason which weighed with the learned District Judge in discarding the Will, which has also appealed to the High Court, is that Smt Yamunabai completely disinherited her other daughters and gave the entire property to Smt Ramabai. **In our opinion, the fact that Smt Yamunabai excluded all other daughters and gave the entire property to the plaintiff Smt Ramabai could not be a ground to cast any doubt regarding the authenticity of the Will in the facts and circumstances of the case in hand. It is not a case of exclusion of a son who may have been living with the parents or looking after them. It is a case of making provision for a widowed daughter who had been left a destitute on account of the death of her husband at a very early age. If the parental property was to be divided**



equally amongst all the seven sisters, the share inherited by Smt Ramabai would have been quite small, making it difficult for her to survive. The house is situate in a village and is not in a big town or city where it may have any substantial value. In fact, if the background in which the Will was executed is examined carefully, it would be apparent that this was the most natural conduct of the mother and giving of equal shares to all the daughters would have entailed a serious hardship to the plaintiff Smt Ramabai.”

{bold portions emphasized}

33. On the same analogy, reference can also be invited to the decision in the case of **Khem Chand v. State**⁸ wherein it was held that there is no obligation on the part of testatrix to disclose the reasons for having divested of her natural heirs from the properties being the subject matter of the Will. Learned counsel for the appellant, however, heavily relied on the decision by the Supreme Court in the case of *Kavita Kanwar v. Pamela Mehta (supra)* wherein the finding that no plausible reason had been assigned for non-inclusion of the only son and other daughter of the testatrix in the execution of the Will, was found to be a suspicious circumstance.

34. However, the aforesaid plea is misconceived since it appears that in paragraph (27) of the aforementioned judgment the Supreme Court merely recorded the submissions of the learned counsels for the parties. As to whether or not non-assignment of any plausible reason for non-exclusion would be fatal to the validity of the Will, it was observed as under:

“**28.** There is no doubt that any of the factors taken into account by the trial court and the High Court, by itself and standing alone, cannot operate against the validity of the propounded will. **That is to say that, the will in question cannot be viewed with suspicion only because the appellant had played an active role in**

⁸ 2010 (169) DLT 556



execution thereof though she is the major beneficiary; or only because the respondents were not included in the process of execution of the will; or only because of unequal distribution of assets; or only because there is want of clarity about the construction to be carried out by the appellant; or only because one of the attesting witnesses being acquaintance of the appellant; or only because there is no evidence as to who drafted the printed part of the will and the note for writing the opening and concluding passages by the testatrix in her own hand; or only because there is some discrepancy in the oral evidence led by the appellant; or only because of any other factor taken into account by the courts or relied upon by the respondents. The relevant consideration would be about the quality and nature of each of these factors and then, the cumulative effect and impact of all of them upon making of the will with free agency of the testatrix. In other words, an individual factor may not be decisive but, if after taking all the factors together, conscience of the court is not satisfied that the will in question truly represents the last wish and propositions of the testator, the will cannot get the approval of the court; and, other way round, if on a holistic view of the matter, the court feels satisfied that the document propounded as will indeed signifies the last free wish and desire of the testator and is duly executed in accordance with law, the will shall not be disapproved merely for one doubtful circumstance here or another factor there.”
{bold portions emphasized}

35. It was in the peculiar facts and circumstances of the case that the Supreme Court in the case of *Kavita Kanwar (supra)* held as under:

“29.2... Even if the parents had special liking and affection towards the appellant, as could be argued with reference to the gift made by the father in her favour of the ground floor of the property in question, it would be too far stretched and unnatural to assume that by the reason of such special affection towards appellant, the mother drifted far away from the other children, including the widowed daughter who was residing on the upper floor of the same house and who was taking her care. In the ordinary and natural course, a person could be expected to be more inclined towards the child taking his/her care; and it would be too unrealistic to assume that special love and affection towards one, maybe blue-eyed, child would also result in a person leaving the serving and needy child in lurch. As noticed, an unfair disposition of property or an unjust



exclusion of the legal heirs, particularly the dependants, is regarded as a suspicious circumstance. The appellant has failed to assign even a wee bit reason for which the testatrix would have thought it proper to leave her widowed daughter in the heap of uncertainty as emanating from the will in question.....”

36. Reverting to the instant matter, in order to understand the exclusion of the other legal heirs, it would be apposite to reproduce the contents of the Will (Ex.PW-1/A), which reads as follows:

“FAMILY WILL

This Deed of Will is made and executed on this 24th day of April 2001, by Sh. Fal Chand S/o Sh. Mam Raj R/o H.No. A-5/B-58B, DDA Flats, Paschim Vihar, New Delhi, hereinafter called the Testator.

Life is but short and God knows when it may come to an end, hence I with my free will and without any pressure make this Will with my sound and disposing mind.

Whereas I am the owner and in possession of DDA Flat No. A-5/B-58B, on Ist Floor (Janta Flat), area measuring 32 sq.yds. Situated at Paschim Vihar, New Delhi, Vide File No. F25 (295) BOHBM dated 7.7.1982 allotted by the DDA

And whereas I hereby bequeath that after my death my above said property shall go and devolve in favour of my wife Smt. Yasuda W/o Sh. Fal Chand R/o H.NN. A-5/B-58B, DDA Flats, Paschim Vihar, New Delhi, and after death the above mentioned property with all its rights, title, interest etc. shall go and devolve on my daughter in law Smt. Saraswati W/o Sh. Sukh Dev R/o. A-5/B-58B, DDA Flats Paschim Vihar New Delhi, shall the sole and absolute owner of the above mentioned property and she has have full power to alienate and transfer the same in any manner she like and to transfer the same to effect mortgage bank F.D. Bank Account Post Office MISC, LIC, jewellery court case compensation amount moveable & immoveable property, gift, mutation in his name, she is executor of my will.

That my daughter in law Saraswati, my serving me in this old and I am very happy and glad with her serving. That any other claimant shall no claim title and interest in the above said properties and any objection raised any hisher regarding this Will shall be deemed as null.

In case any one raises any objection and challenges this Will the objection shall be treated as null and void.

Hence this will is made at Delhi.



Witness:

Sd/-

1. Dinesh S/o Sh. Karan Singh
R/o. House NO. 709, Ward No.6,
Mehrauli, New Delhi.

Testator

Sd/-

2. Brijesh Kumar
S/o Sh. Ram Phal
R/o 705/T-15, Ward No.3,
Mehrauli, New Delhi”

37. A careful perusal of the aforesaid ‘Will’ would show that the deceased testator first intended that the property in question after his death should go and devolve upon his daughter-in-law i.e. the respondent No.2/Saraswati Devi who thereafter shall be the sole and absolute owner of the above said property. It further goes on to provide that respondent No.2/ Saraswati Devi shall have full power to alienate and transfer the same in any manner she likes.

38. Though at first blush, it appears that the aforesaid ‘Will’ does not assign any reason as to why the deceased testator excluded other legal heirs from his pre-deceased son Jai Gopal as well as his daughter from being the beneficiaries in respect of his property , however at the same time it does expresses the gratitude of the testator towards the services being rendered to him by respondent no.2 in his old age. It is also apparent that even the other surviving son Sukhdev, who is the husband of respondent no.2, has not been left any right, title or interest in the property. There is nothing in the testimony of RW-1 to suggest that she was taking care of the testator in his old age. PW-1 was not prodded that she was not taking care of the testator in his old age or that all of them were taking care of the deceased in his old age. There



is no necessity in law for the testator to write a detailed thesis as to why he wants to exclude some or include others.

39. A cursory glance at the Will reveals the testator's clear intention regarding the succession of his properties. He intended for his wife to have a life interest in the property, providing her with a secure shelter, and thereafter, for the property to devolve upon his daughter-in-law, Smt. Saraswati Devi/respondent No. 2. Viewed in this perspective, the testator reasonably expected his wife to predecease his daughter-in-law, although he was aware that the order of death is unpredictable. The key takeaway is that the testator's disposition of property, as outlined in his Will, reflects his natural thought process, which deserves paramount importance and must be respected.

40. Lastly, the appellant's counsel's plea that the Will was executed under suspicious circumstances due to the attesting witnesses' relationship with the beneficiary is also legally unsustainable. Apart from inviting reference to the passage from the decision in the matter of *Kavita Kanwar v. Pamela Mehta (supra)*, the Supreme Court in the case of *Anand Burman v. State (supra)* has held that even a beneficiary could also be an attesting witness and mere relationship does not disqualify a person, unless *malafides* or undue influence is demonstrated.

41. In summary, the appellant or the Caveator has not been able to discharge the onus of proving any suspicious circumstances pertaining to the execution of the impugned Will in question dated 24.04.2001 in any manner.



42. In view of the foregoing discussion, this Court is unable to find any illegality, perversity or incorrect approach adopted by the learned Probate Court in passing the impugned judgment dated 28.02.2013. Hence, the present appeal is dismissed.

DHARMESH SHARMA, J.

MAY 06, 2025

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