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

% Judgment delivered on: 22.08.2025

\+ **FAO 203/2008**

RANJAN RATTAN VADHERA .....Appellant

Versus

STATE & ORS. .....Respondents

Advocates who appeared in this case

For the Appellant : Mr. Jai Sahai Endlaw, Mr. Saran Suri, Ms. Ruchi Jain, Mr. Sahil Goyal & Mr. Zubin John, Advocates.

For the Respondents : Mr. Naresh Kumar Bhalla, Advocate for R-2&3.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

CM APPL. 44515/2025

1. The Appellant / Applicant has filed the present Review Application ("**Application**") praying for review of the Judgment dated 25.06.2025 ("**Judgment**") passed by this Court in FAO No.203/2008.

2. The Appellant / Applicant has filed the present Application on the ground that certain issues and pertinent questions of law have either been inadvertently overlooked or not taken note of while passing the Judgment.

3. The Appellant / Applicant has submitted that the Judgment is required

to be reviewed as:

i. There was no objection from any Respondents with respect to the execution of the Will. As the factum of attestation of the Will has been proved, the probate ought to have been granted in favour of the Petitioner / Applicant. Respondent No.2 had submitted written objections and Respondent No. 3 did not object to grant of probate in favour of the Petitioner / Applicant.

ii. There is a presumption in law in favour of the Appellant / Applicant regarding the genuineness attached to the signatures of the Testatrix as the signature of one of the attesting witnesses was duly proved. Unless the signature of Testatrix is rebutted by any cogent evidence, the Court ought to have accepted her signature on the Will.

iii. The circumstantial evidence, which was the best possible evidence that was available and in the absence of any cogent evidence being produced by the other legal heirs to object, there was a presumption under law regarding the genuineness and authenticity of the Will and the signatures thereon.

iv. The Will dated 20.09.1972 being a more than thirty-year old document, as per Section 90 of the Indian Evidence Act, 1872 ("**Act**"), the same is presumed to be authentic, genuine and duly executed by the Testatrix as well as the attesting witnesses in absence of any cogent evidence in support of the objection for grant of the probate.

SUBMISSIONS ON BEHALF OF THE APPELLANT / APPLICANT:

4. The learned counsel for the Appellant / Applicant submitted that the evidence produced before the learned Trial Court established the complete chain in respect of a reasonable conclusion in favour of validity and execution of the Will by the Testatrix supported by corroborating evidence, which remained uncontroverted. As there was no cross-examination either in respect of the execution of the Will, there exists a strong presumption in law in favour of the Appellant / Applicant regarding the signature of the Testatrix and the execution and attestation of the Will.

5. It was submitted that originally, Respondent No.2, i.e., the husband of Testatrix and father of the Appellant / Applicant, had filed objection opposing the grant of probate, however, Respondent No.2 died on 06.01.2009. Respondent No. 3, i.e., sister of the Appellant / Applicant and daughter of the Testatrix did not originally file any objections for grant of probate before the learned Trial Court and in the present Appeal. The Judgment inadvertently does not observe that Respondent No. 3, having not objected, had lost all her rights to object to grant of probate.

6. In the absence of any objections and in view of the testimony of the Appellant / Applicant before the learned Trial Court, wherein it was stated that the Will was, in fact, executed by the Testatrix and as there was no cross-examination of the Appellant / Applicant on this aspect, the execution of the Will was proved by the Appellant / Applicant.

7. The learned Counsel for the Appellant / Applicant relied upon the decision of this Court in ***Chanchal Dhingra v. Raj Gopal Mehra*** 2013 SCC OnLine Del 3753 and ***State of U.P. v. Nahar Singh (Dead) and Others*** (1998) 3 SCC 561.

8. In ***Chanchal Dhingra*** (*supra*), it is observed that:

> *"29. In my opinion, no argument can be made by the respondent/plaintiff, of the suspicious circumstances argued above relating to the documents, without confronting the appellant/defendant therewith in cross-examination and which has not been done in the present case. Though the senior counsel for the respondent/plaintiff attempted to contend that there was no need for the respondent/plaintiff to cross-examine the appellant/defendant with respect to the suspicious circumstances apparent on record and to the naked eye, but I am unable to agree. All the suspicious circumstances argued are such which are explainable or which can well be mistakes/errors during preparation and execution of documents. Such mistakes/errors generally happen when a transaction is happening in an atmosphere of cordiality, without the contracting parties suspecting each other. The possibility of such mistakes is remote when documents are forged and fabricated to serve a purpose and with knowledge that the same will be subject to scrutiny in law and usually when it is doubly verified that there is no mistake therein. It cannot be lost sight of that the evidence of the respondent/plaintiff is not, of the signatures on the documents being his and matter thereon being typed subsequently (which was the plea taken in the plaint) but of denial of signatures on the documents. The respondent/plaintiff in the cross-examination also deposed that he had not put his signatures on the General Power of Attorney, Agreement to Sell, Affidavit, Will and the Receipt and his signatures had been forged by Sh. Madan Lal Dhingra. Once that was the evidence, the argument of the appellant/defendant/her husband having squeezed the contents on three sheets of paper signed by the respondent/plaintiff in blank disappears; if the appellant/ defendant/her husband were forging the signatures of the respondent/plaintiff on three sheets of paper on which the Agreement to Sell is typed, they could very well have forged the same on four or five sheets of paper and there was no need for them to use different font or different spacing on different pages. Judicial notice can be taken of the manner in which such documents are usually prepared. Unfortunately, documents relating to transfer of valuable properties are not always drafted by Advocates in the peace of their office but are mostly got prepared from Deed Writers or pool of typists sitting in the Court compound or in the office of the Sub-Registrars and for*

the sake of saving on time, the work of typing is often distributed amongst several typist available and which can result in different pages of the same document being in different fact and having different spacing.

30. Similarly, the putting of point 'A' during the testimony of Sh. Madan Lal Gulati, witness to the Agreement to Sell, against the signatures of Sh. Madan Lal Dhingra and not against the signatures of Sh. Madan Lal Gulati is clearly a case of mistake/error, perhaps due to the same first and middle name of the two. The respondent/plaintiff ought to have in the cross-examination of the said witness quizzed him in this respect and without doing so, cannot take any advantage thereof. The Supreme Court in Rajinder Pershad v. Darshana Devi (2001) 7 SCC 69 has held that there is an age old rule that if you dispute the correctness of the statement of a witness you must give him an opportunity to explain his statement by drawing his attention to that part of it which is objected to as untrue, otherwise you cannot impeach his credit. The following observation of Lord Herschell, L.C. in Browne v. Dunn (1893) 6 R 67 (HL) was cited with approval:

"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses."

The same principles were recently reiterated in Laxmibai v. Bhagwantbuva (2013) 4 SCC 97 and it was further

held that they are essential to ensure fair play and fairness in dealing with the witness.

*** *** ***

32. Yet similarly, there is no cross-examination on the difference in dates which the General Power of Attorney bears and the date of notarization thereof or the difference in the date of the Agreement to Sell mentioned in the Affidavit and the date which the Agreement to Sell bears. The same is the position with respect to the signatures of the "first party" and the "second party" on the Agreement to Sell. The basis of all the said arguments of suspicion, is the legal acumen of the counsel for the respondent/plaintiff and not the foundation laid therefor in evidence and in cross examination. The appellant/defendant cannot be condemned on such discrepancies/suspicions without having an opportunity to explain the same. The Supreme Court, though in the context of a Will, in Madhukar D. Shende v. Tarabai Aba Shedage (2002) 2 SCC 85 has held that the law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit conjectures or suspicion to demolish a fact otherwise proved by legal and convincing evidence. It was further held that suspicion alone cannot form the foundation of a judicial verdict - positive or negative. All the documents viz. Agreement to Sell, General Power of Attorney, Will, Receipt and Affidavit have been proved in accordance with law and the signatures thereon also now have been conclusively proved to be of the respondent/plaintiff and cannot be discarded on the basis of suspicious circumstances argued and of which no opportunity was given to the appellant/defendant and her witnesses to explain."

9. In ***Nahar Singh (Dead) and Others*** (*supra*), it is held that:

> ***"13.*** *It may be noted here that that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:*

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

14. The oft-quoted observation of Lord Herschell, L.C. in Browne v. Dunn [(1893) 6 R 67] clearly elucidates the principle underlying those provisions. It reads thus:

> *"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses."*

This aspect was unfortunately missed by the High Court when it came to the conclusion that explanation for the delay is not at all convincing. This reason is, therefore, far from convincing.

10. It is submitted by the learned Counsel for the Appellant / Applicant that the Appellant being the son of Testatrix was competent to recognize her

signature and was not required to be physically present at the time of the execution of the Will, in order to identify her signature. The judgment relies on the fact that Appellant / Applicant was not present at the time of execution of the Will, however, no weightage can be given to such a fact as this case is covered under Section 69 of the Evidence Act, 1872 as the Appellant / Applicant has led secondary evidence and does not require the execution of the Will to be proved by the person who witnessed the said execution.

11. It was further submitted that even assuming that Respondent No. 3 was entitled to object, it was the case of Respondent No.3 that the Testatrix performed the marriage of Respondent No.3 on 16.09.1972, i.e., four days prior to the execution of the Will dated 20.09.1972. The fact that Respondent No.3 admits that the Testatrix was competent to perform the marriage of her own daughter, shows the absence of any suspicious circumstances or inability of the Testatrix to execute the Will.

12. It was further submitted that as per Section 90 of the Act, there is a presumption in favour of the valid execution of the Will as the same was executed more than thirty years ago. The learned Counsel for the Appellant / Applicant relied upon the decision of this Court in ***Subhash Nayyar & Ors. v. Registrar, University of Delhi & Ors.*** 2013 (134) DRJ 457, wherein the Division Bench of this Court had held that once it stands established that the document in question was thirty years old and produced on proper custody, the presumption would be attracted in order to support the fact that the document was in the handwriting of the person concerned and had been so executed and attested. As the custody of the document had not been

questioned in the present case and as the Will is thirty years old, the signature of the Testatrix stands proved in terms of Section 90 of the Act.

13. The learned Counsel for the Appellant / Applicant submitted that as per the settled legal position with respect to the twin requirement under Section 69 of the Act, the Division Bench of the Madras High Court in ***Punnuswami Goundan & Anr. v. Kalyanasundara Ayyar & Ors.*** 1934 SCC OnLine Mad 16 has held that the signature of the attesting witness having been proved, it would be presumed that the witness would not have subscribed his name in attestation of that which did not take place. This view of the Madras High Court has been endorsed subsequently in another judgment of the Madras High Court in ***Jayalakshmi Ammal v. K. Lakhsmi Iyengar rep. by power Agent M. Jayaramiyer*** 1992 SCC OnLine Mad 94, wherein after considering the views taken by various High Courts, it has been held that for the purpose of Section 69 of the Act, it is not necessary for the same witness to prove the signature of the attesting witness and that of the executant, and that the said requirements could be satisfied by two different witnesses.

14. It was submitted that even though Section 69 of the Act requires fulfillment of two conditions, emphasis has been laid on the first condition about proving the attestation of at least one of the attesting witnesses.

15. The learned Counsel for the Appellant / Applicant also relied upon the Decision of this Court in ***Surender Rode v. Madan Mohan Rode & Ors.*** 2013 (139) DRJ 98, wherein it has been held that there is no bar to the signature of executant of a Will being proved by the propounder of the Will.

16. In view of the above settled legal position, the Judgment observing that both conditions under Section 69 of the Act are required to be fulfilled, is required to be reviewed.

17. Accordingly, the learned Counsel for the Appellant / Applicant submitted that the present Application be allowed and consequently the Appeal also be allowed by granting the probate in favour of the Appellant / Applicant.

SUBMISSIONS ON BEHALF OF THE RESPONDENT No.3:

18. The learned counsel for Respondent No.3 submitted that this Application is not maintainable as there is no error apparent on the face of the Judgment. There is no misinterpretation of law or any failure to consider any issue raised before this Court in the Judgment.

19. It was also submitted that the present Application has been filed to extend the period of limitation so as to challenge the Judgment as the Appellant / Applicant has not challenged the Judgment in accordance with law. There is no legal question pending to be answered in the Judgment and there is no mistake or misinterpretation of law in the Judgment. Hence, the present Application deserves to be dismissed.

20. It was submitted that the review is not a second appeal and the scope of review is very limited as it does not give an opportunity to reargue the case. As the Appellant / Applicant has failed to discharge the burden of proving the valid execution of the Will, the Judgment has rightly dismissed the Appeal.

21. As regards the argument of the Will being a thirty-year old document, the learned Counsel for Respondent No. 3 submitted that the probate case

was filed in the year 2000 and, therefore, the Will was not a thirty-year old document at the time of filing of the probate case. The pendency of the probate case before the learned Trial Court and the Appeal before this Court cannot enure to the benefit of the Appellant / Applicant as the relevant date for considering whether the document is a thirty-year old document is on the date of filing of the probate case. Hence, the submission about the Will being a thirty-year old document is an afterthought and cannot be taken up for the first time in the Application.

22. It was further submitted that no ground for review of the Judgment has been made out by the Appellant / Applicant and the Application deserves to the dismissed.

ANALYSIS AND FINDINGS:

23. This Court has *vide* judgment dated 25.06.2025 dismissed the Appeal of the Appellant / Applicant while observing that:

> *"25. However, whether the signature of the Testatrix on the Will document was made in her handwriting or not is required to be proved. It is the Appellant's case that - firstly, the Succession Certificate was granted by the learned Sub-Judge after examining the attesting witnesses of the Will; and secondly, the learned Sub-Judge had endorsed the Will document as original.*
>
> *26. The following factors are relevant to evaluate whether signature of the Testatrix on the Will document was made in her handwriting:*
>
> *a) The Testatrix executed the said Will on 20.09.1972. She passed away a month later on 20.10.1972 and it is undisputed that she was suffering from some health conditions before her demise.*
>
> *b) The Appellant admitted in his cross-examination that he was not present during the execution of the said Will by the Testatrix.*

c) *The Appellant has failed to draw a co-relation between the grant of Succession Certificate and the valid execution of the Will.*

d) *The Appellant submitted that the attesting witnesses were examined in the proceedings before the learned Sub-Judge in the proceedings for grant of succession certificate. However, the same remains uncorroborated because the record of the said proceedings could not be produced as they were burnt due to fire in Tis Hazari Court as per the Appellant's version.*

e) *The Appellant submitted that the learned Sub-Judge in the proceedings for grant of Succession Certificate had endorsed the Will in question as original. After perusing the said document, the Appellant's contention remains unsubstantiated as firstly, the Appellant has failed to establish any between the alleged endorsement on the said document and the grant of Succession Certificate; and secondly, the veracity of the said document still remains under question as it does not have any seal or stamp of the Court of Sub-Judge concerned.*

27. In view of the above facts and circumstances, the second precondition under Section 69 of the Indian Evidence Act, 1872 is not satisfied in the present case as it cannot be established that the signature on the said Will document is that of the Testatrix herself.

28. As the Appellant has failed to discharge the burden of proving the valid execution of the Will in question, there is no infirmity with the Impugned Order. Accordingly, the present Appeal is hereby dismissed. Pending Application(s), if any, also stand disposed of."

24. The Appellant / Applicant has sought to reargue the Appeal by raising substantial arguments in guise of reviewing the Judgment. At the time of hearing of the Appeal, all arguments made by the Appellant / Applicant were considered while passing the Judgment.

25. It is a settled position that the scope and ambit of the Court's power under Section 114 read with Order 47 Rule 1 of Code of Civil Procedure, 1908 ("**CPC**") is very limited and the review application is maintainable

only if there is a discovery of new and important matters or evidence, which after the exercise of the due diligence was not within the knowledge of the applicant or there is some mistake or error apparent on the face of the record. It is also settled law that an error apparent on the face of the record must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. Where an alleged error is far from self-evident and has to be detected by a process of reasoning after lengthy and complicated arguments, it can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review.

26. It is not permissible for an erroneous decision to be 'reheard and corrected'. A review application has a limited purpose and cannot be allowed to be 'an appeal in disguise'. It is well established that the power of review can be exercised for correction of a mistake but not to substitute a view. The ground of 'any other sufficient reason' provided in Order XLVII Rule 1 of the CPC has to be a reason sufficient on the grounds that are at least analogous to those specified in the said Rule. There is no doubt that the Court while exercising the power of review does not sit in appeal over its own order as rehearing of the matter is impermissible in law. Once a judgment is signed and pronounced, it should not be altered and the exercise of inherent jurisdiction cannot be invoked for reviewing any order beyond the limited scope and ambit prescribed under law for review.

27. In view of the above, the Application filed by the Appellant / Applicant does not make out any grounds that are within the limited scope available for review of the Judgment. All the grounds mentioned in the Application are beyond the permissible scope for reviewing the Judgment.

28. As regards the ground of non-objection by Respondent No.3, the same is not relevant. In any event, the Judgment has considered the same in paragraph 12 of the Judgment. Hence, the Appellant / Applicant is not permitted to raise the same argument which has already been considered by this Court while passing the Judgment by way of this Application. As per the settled law as discussed above, this Application cannot be used for rearguing the Appeal *de novo*.

29. The contention of the Appellant / Applicant that failure to cross-examine the Appellant / Applicant about his statement in his affidavit of evidence that the Will was executed by the Testatrix, amounts to proving the execution of the Will, cannot be accepted. The Judgment has analyzed the law with respect to the proof and execution of the document required by law to be attested and proving the same where no attesting witness is found as provided under Sections 68 and 69 of the Act. Accordingly, it is required that both the pre-conditions as prescribed under Section 69 have to be fulfilled. The argument of the Appellant / Applicant that merely stating that the Will was executed by the Testatrix and there being no cross-examination on that aspect, amounts to proving of the signature of the Testatrix is untenable.

30. As per Section 69 of the Act, it must be proved that the signature of the person executing the document is in the handwriting of that person. The testimony of the Appellant / Applicant before the learned Trial Court does not specifically state that the signature on the Will is in the handwriting of the Testatrix. The Appellant / Applicant has admitted during his cross-examination that he was not personally present at the time of execution of the Will. In the absence of any proof that the signature on the Will was of the

Testatrix, the mandatory requirement of Section 69 of the Act has not been fulfilled as already held in the Judgment.

31. There is no cavil that under Section 69 of the Act, it is not necessary for the same witness to prove the signature of the attesting witness and that of the executant, and the said requirement can be satisfied by two different witnesses. Hence, ***Jayalakshmi Ammal*** (*supra*) is not applicable in the present case as it holds that the second condition of proving the signature of the executant can be proved by a different witness than the one who proved the signature of the attesting witness, however, the said decision does not hold that the second requirement under Section 69 of the Act is not required to be fulfilled.

32. The decision of ***Punnuswami Goundan*** (supra) was in the context of Section 67 of the Act, which requires proof of signature and handwriting of the person alleged to have signed or written the document. The said decision held that Section 67 of the Act does not specify the limit and the kind of evidence required so long as the proof of signature or handwriting is by way of admissible evidence. The observation in the said decision that "*The signature of the attesting witness, when proved, is evidence of everything upon the face of the instrument, since it is to be presumed that the witness would not have subscribed his name in attestation of that which did not take place*" is in the context of manner of proving the signature or handwriting on an instrument. However, this decision does not deal with the requirement of proving the signature under Section 69 of the Act. There cannot be any presumption with regard to the requirement of proving that the signature on the Will is in the handwriting of the Testatrix by proving the signature of the attesting witness of the Will. Section 69 of the Act provides for both the

requirements to be fulfilled as it clearly mentions '**and**' for both the conditions. Hence, fulfillment of the first condition cannot be presumed to be fulfilling the second condition.

33. It is open for the propounder of the Will to prove the signature of the executant of the Will as rightly held by this Court in the case of ***Surender Rode*** (supra). However, in this case, the Appellant has failed to prove that the signature on the Will is in the handwriting of the Testatrix. There is no such statement in the affidavit of evidence of the Appellant / Applicant before the learned Trial Court. As the Appellant / Applicant has failed to prove that the signature on the Will is in the handwriting of the Testatrix, the second condition as per Section 69 of the Act has not been fulfilled as rightly observed in the Judgment.

34. Section 90 of the Act is not applicable as on the date of filing of the probate case in the year 2000, the Will was not a thirty-year old document. Therefore, this argument being taken up for the first time in this Review Application, which was not even pleaded in the Appeal, is clearly an afterthought and cannot be considered.

35. In view of the above, no ground has been made out for reviewing the Judgment. Accordingly, this Review Application is dismissed.

TEJAS KARIA, J

AUGUST 22, 2025
'gsr'