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

% ***Judgment reserved on: 13.08.2025***
Judgment pronounced on: 09.09.2025

\+ FAO(OS) 151/2018 & CM APPL. 35605/2019
RAJINDER PAL SINGH BHATIA .....Appellant
Through: Mr. Rajat Aneja and Mr. Anant Chaitanya Dutta, Advocates.

versus

THE STATE & ORS. .....Respondents
Through: Mr. Sandeep Agarwal, Senior Advocate with Mr. M.K. Singh & Ms. Tanya, Advocates for R-2.

\+ FAO(OS) 152/2018 & CM APPL. 35588/2019
RAJINDER PAL SINGH BHATIA .....Appellant
Through: Mr. Rajat Aneja and Mr. Anant Chaitanya Dutta, Advocates.

versus

THE STATE & ORS. .....Respondents
Through: Mr. Sandeep Agarwal, Senior Advocate with Mr. M.K. Singh & Ms. Tanya, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present two Appeals arise from a composite Judgment dated 03.07.2018 [hereinafter referred to as 'Impugned Judgment'], passed in two connected (and specifically consolidated) Probate Petitions, in respect of the estate of the deceased Testator, late Shri

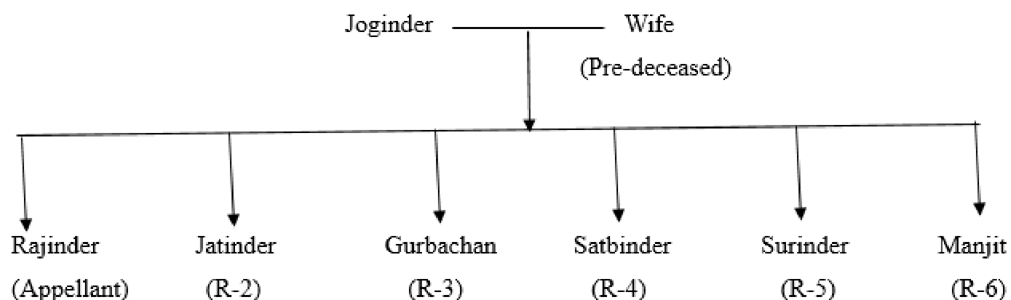
Joginder Singh Bhatia [hereinafter referred to as 'Sh. Joginder'], who happened to be the father of the parties.

2. Two separate Wills which were alleged to have been executed by the same person, i.e., Sh. Joginder, who unfortunately expired at Delhi on 01.12.1994, have been propounded, one by Sh. Jatinder Singh Bhatia [hereinafter referred to as 'Sh. Jatinder] and the second by Smt. Manjit Khanna [hereinafter referred to as 'Smt. Manjit']. The parties to the said Probate Petitions were Class-I legal heirs of the said deceased Testator, comprising his 5 sons and one daughter.

3. With the consent of learned counsel for the parties, both Appeals are heard together and are being disposed of by this common order.

FACTUAL MATRIX:

4. At the time of the death of Sh. Joginder all his six children were alive. The genealogy of the family is extracted as under:



5. In Probate Petition 37/1995, Sh. Jatinder prays issuance of a probate on the strength of the registered Will dated 15.05.1994, executed by Sh. Joginder in his favour, which was attested by two

attesting witnesses, namely, Sh. Ravinder Pal Singh [hereinafter referred to as ‘Sh. RP Singh’] and Sh. Yoginder Singh Bhatia [hereinafter referred to as ‘Sh. Yoginder’], who have been examined as PW-1 and PW-2.

6. On the other hand, Smt. Manjit, daughter of late Sh. Joginder, filed Probate Petition 42/1995 on the basis of the Will dated 15.11.1994, which was attested by two attesting witnesses, namely, Sh. Harjit Singh [hereinafter referred to as ‘Sh. Harjit’], who turned hostile and late Sh. M.P. Singh Ahluwalia [hereinafter referred to as ‘Sh. MP Singh’], who died before the evidence was recorded.

7. Learned Single Judge has allowed the Probate Petition 37/1995 and dismissed the Probate Petition 42/1995.

CONTENTIONS OF THE PARTIES:

8. Learned counsel for the Appellant, while criticizing the judgment of the learned Single Judge, has submitted that the Will dated 15.05.1994 is surrounded by the following suspicious circumstances:

i. Both the attesting witnesses to the Will dated 15.05.1994 were not known to the family of Sh. Joginder (the Testator). Both of them are made out to be friends of brother of the wife of Sh. Jatinder, who is the beneficiary of the Will.

ii. The Will is contrary to the family settlement dated 22.09.1979. Moreover, the exclusion of all other heirs while executing a bequest in favour of one son is unnatural.

iii. The suit filed by the Appellant in the year 1990 was only with respect to the dissolution of the partnership firm, and the testator was no longer the owner of the subject property in view of the aforesaid settlement.

iv. The settlement deed dated 29.08.2011 is in line with the family settlement dated 22.09.1979. But the Appellant has been excluded. It is contended that in the Will dated 15.05.1994, a description of as many as eight properties has been given, whereas, Sh. Joginder, in the Will dated 15.11.1994, has disclosed that he was the owner of ten properties. Hence, the Will dated 15.05.1994 is surrounded by suspicious circumstances.

v. The Will dated 15.11.1994 has been proved by Sh. Harjit, attesting witness, who subsequently turned hostile, and by the deposition of Sh. Dilbar Singh [hereinafter referred to as 'Sh. Dilbar'], who was an employee of Sh. MP Singh. Lastly, it is contended that equitable distribution has been made by the Will dated 15.11.1994, which should have been accepted by the learned Single Judge.

9. *Per contra*, learned senior counsel for the Respondent No. 2 supported the Impugned Judgment. Learned senior counsel submits that the Will dated 15.11.1994 has not been proved by the Appellant. It is further submitted that Sh. Harjit, who turned hostile, had failed to support the case set up by the Appellant and the deposition of Sh. Dilbar is not sufficient to prove the will.

<u>FINDINGS & ANALYSIS:</u>

10. Heard learned counsel for the parties at length and, with their

able assistance, perused the paperbook along with the requisitioned record.

11. It be noted that for proving a Will (testament), the propounder is required to prove its execution in accordance with Section 63(c) of the Indian Succession Act, 1925. The same has been reproduced hereunder:

> *"**63. Execution of unprivileged Wills**.*
>
> *Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an employed or engaged, or a marine according to the following rules:-*
>
> *(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 acknowledgement of his signature or mark, or 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."*

12. Further, Section 67[1] of the Bharatiya Sakshya Adhiniyam, 2023 [hereinafter referred to as 'BSA, 2023'], requires examination of one attesting witness to prove the will. The provision has been reproduced hereunder:

> *"67. **Proof of execution of document required by law to be attested**.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:*
>
> *Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically*

[1] Section 68, Indian Evidence Act, 1872

denied."

13. Admittedly, there are two attesting witnesses of the Will dated 15.11.1994. As already noted above, one of the attesting witnesses, namely, Sh. Harjit failed to support the Appellant during his cross-examination. Further, no effort was made by learned counsel to get the witness declared hostile and then cross-examine him. The second attesting witness of Will dated 15.11.1994, Sh. MP Singh, died. Sh. Dilbar, who allegedly worked as a peon with Sh. MP Singh was examined but he was required to depose in accordance with Section 68 of the BSA, 2023[2]. It requires that the propounder should prove that the Will was signed by the attesting witness and testator.

14. In the present case, Sh. Dilbar claims that he does not remember any particular event, in the office of Sh. MP Singh, concerning the date 15.11.1994. Further, he stated that the facts narrated in the affidavit of his examination-in-chief were drafted by the counsel and no such fact has taken place. Therefore, Sh. Dilbar's deposition is not reliable as he has contradicted the affidavit of his examination-in-chief. Moreover, his deposition falls short of proving the signature of Sh. MP Singh (one of the attesting witness of the will dated 15.11.1994) because he has not proved the signature of Sh. MP Singh on the Will.

15. Thus, the learned Single Judge is correct in drawing the conclusion that the Will dated 15.11.1994 has not been proved in accordance with law.

16. Further, with regard to the Will dated 15.05.1994, both the

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[2] Section 69, Indian Evidence Act, 1872

attesting witnesses have been examined as PW-1 and PW-2. As already noted above, as per Section 67 of the BSA, 2023, examination of one attesting witness is necessary, whereas in the present case, both the attesting witnesses were examined. Despite the lengthy cross-examination of both the attesting witnesses, the learned counsel failed to impeach their credibility. There is no dispute with respect to the identification of the Testator because his photograph is pasted on the registered Will.

17. It is to be noted that an attesting witness is to attest the document and state that the testator has either appended his signature in the presence of the attesting witness, or the attesting witness received acknowledgment from the testator to the effect that he has signed the will and is not required to know the details of the family of the testator. Even if Sh. RP Singh was a relative of the wife of Sh. Jatinder, still, he is a natural witness because he was known to the family. Moreover, it is the choice of the testator that cannot be doubted.

18. Learned counsel for the Appellant has referred to various observations made by the learned Single Judge in view of the fact that the witness took pauses while answering the questions. However, this cannot be a valid ground to doubt the credibility of the witness, particularly when it is a registered Will. In any case, Sh. Yoginder has also supported the Will dated 15.05.1994.

19. Additionally, though the learned counsel for the Appellant has submitted that there was a family settlement on 22.09.1979, however, it is in fact a dissolution deed of a partnership run by the family

members under the name of M/s Royal Safe Company. This dissolution deed is not a Memorandum of Family Settlement as it only deals with the property of the partnership firm.

20. Further, the testamentary disposition of the property is executed to deviate the property from natural succession. In the present case, Sh. Joginder used to reside with Sh. Jatinder and his family, and therefore, it is natural for him to execute a bequest in favour of his son, Sh. Jatinder. Hence, it is not an unnatural disposition as is being claimed by the Appellant.

21. The next argument of the learned counsel for the Appellant also does not have any substance, as the Appellant has not claimed that, in the previous suit, Sh. Joginder was under the influence of Sh. Jatinder or his family. Only to that extent, the judgment in the previous suit is relevant.

22. This Court has perused Paragraph No.27 of the Impugned Judgment. The same has been reproduced hereunder:

> *"27. I have perused the plaint of April, 1990 in the suit aforesaid filed by Rajender and though admittedly Joginder and Jatinder alone had continued to be joint in residence and business and all other sons of Joginder had separated as far back as in 1979, but it was not the plea of Rajender till April, 1990 that Joginder was under undue influence of Jatinder. Therefore it can safely be assumed that from October, 1979 till April, 1990, inspite of Jatinder alone being joint in residence and business with Joginder, it was not the plea of anyone that Joginder was under the influence or undue influence of Jatinder. What remains to be seen is, whether post April, 1990, till 15th May, 1994, Joginder came under undue influence of Jatinder."*

23. In the reproduced paragraph of the Impugned Judgment, the learned Single Judge has relied upon the plaint of Civil Suit no. 1441/1990 filed by the Appellant for dissolution of the partnership

firm, rendition of account, and partition of immovable properties of the partnership firm. In the aforesaid suit, it is admitted by the Appellant that Sh. Joginder and his son, Sh. Jatinder continued to reside jointly in the same house and did business jointly, whereas all the other sons of Sh. Joginder started living separately in 1979. Till April 1990, the Appellants did not plead that Sh. Joginder was under the undue influence of Sh. Jatinder. Therefore, it can be safely assumed that from October 1979 till April 1990, it was not the case that Sh. Joginder was under the undue influence of Sh. Jatinder and his family. Moreover, in the aforesaid suit, Sh. Joginder and Sh. Jatinder filed a joint Written Statement contesting the suit.

24. It is also evident that the Appellant has started litigation against her father and other family members. Sh. Joginder, while filing the Written Statement, also claimed that the Appellant misbehaved with him, and for the same reason, Sh. Joginder has terminated the licence of user granted to the Appellant and filed a suit for recovery of possession of the first floor of the property bearing no. E-28, Rajouri Garden, Delhi. These facts are certainly relevant for the exclusion of the Appellant from inheritance. This suit has not been relied upon for any other purpose.

25. The next argument of the Counsel for the Appellant is based upon a settlement deed which was arrived at during the pendency of suit on 29.08.2011. However, this settlement deed is between the siblings and hence it would not be appropriate to doubt the correctness of the Will on the basis of the aforesaid settlement. Additionally, Sh. Jatinder despite propounding a registered will in his favour, has

amicably settled the dispute with all his other siblings but it is the Appellant who has refused the settlement.

26. The last submission of learned counsel for the Appellant also does not have substance, as it is evident from the bare perusal of Paragraph No.3 of the registered Will dated 15.05.1994 that the testator had bequeathed all his properties in favour of his son, Sh. Jatinder. The Will dated 15.11.1994 has not been proved by the propounder. Hence, the details of the properties in both the Wills would not make any difference, as only the will dated 15.05.1994 has been proved. In any case, there is a residuary bequest bequeathing the entire property in favour of Sh. Jatinder.

27. Learned counsels for the parties have not made any other submissions.

<u>CONCLUSION</u>

28. Hence, finding no merit, the present Appeals, along with pending applications, are dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

SEPTEMBER 09, 2025/jn/sh