



2025:DHC:6981-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 07.08.2025

Judgment pronounced on: 19.08.2025

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FAO(OS) 82/2025 & CM APPL. 44605/2025

PRIYA JAIN

.....Appellant

Through: Mr. Harish Malhotra, Sr. Adv.
with Mr. Kaushal Kait, Mr.
Gurjas Narula, Mr. Anup
Kumar, Mr. Rajiv Bahl, Mr.
Vikas Tomar and Mr. Nikhil
Malik, Advs.

versus

STATE & ORS.

.....Respondents

Through: Mr. Mukul Rohatgi, Sr. Adv.
Mr. Darpan Wadhwa, Sr. Adv.
with Ms. Ruby Singh Ahuja,
Mr. Vasu Singh, Ms. Megha
Dugar, Ms. Aditi Mohan, Mr.
Tribhuvan N. Singh, Mr.
Keshav Sehgal, and Ms. Rea
Bhalla, Advs. for R-2/Usha Jain

Mrs. Kajal Chandra and Mr.
Suyash Swarup, Advs. for R-3

Mr. Rajiv Nayar, Sr. Adv. and
Mr. Darpan Wadhwa, Sr. Adv.
with Ms. Ruby Singh Ahuja,
Mr. Vasu Singh, Ms. Megha
Dugar, Mr. Tribhuvan N.
Singh, Ms. Aditi Mohan, Ms.
Manjira Dasgupta, and Ms. Rea
Bhalla, Advs. for R-6

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RFA(OS) 47/2025, CM APPL. 45694/2025 & CM APPL.
45695/2025



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MS PRIYA JAIN

.....Appellant

Through: Mr. Harish Malhotra, Sr. Adv.
with Mr. Vikas Tomar, Mr.
Kaushal Kait, Mr. Nikhil
Malik, Mr. Gurjas Narula,
Advs.

versus

MR PANKAJ JAIN & ORS.

.....Respondents

Through: Mr. Mukul Rohatgi, Sr. Adv.
Mr. Darpan Wadhwa, Sr. Adv.
with Ms. Ruby Singh Ahuja,
Mr. Vasu Singh, Ms. Megha
Dugar, Ms. Aditi Mohan, Mr.
Tribhuvan N. Singh, Mr.
Keshav Sehgal, and Ms. Rea
Bhalla, Advs. for R-2/Usha Jain

Mr. Rajiv Nayar, Sr. Adv. Mr.
Darpan Wadhwa, Sr. Adv. with
Ms. Ruby Singh Ahuja, Mr.
Vasu Singh, Ms. Megha Dugar,
Mr. Tribhuvan N. Singh, Ms.
Aditi Mohan, Ms. Manjira
Dasgupta, and Ms. Rea Bhalla,
Advs. for R-3/Pooja Jain

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 separate orders passed on the same date and concern the same Appellant, Ms. Priya Jain, daughter of late Shri Davinder Kumar Jain [hereinafter referred to as



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“DKJ”].

2. FAO(OS) 82/2025 assails the Order dated 27.05.2025 passed by the learned Single Judge in TEST. CAS. 54/2014, whereby probate of an alleged Will dated 11.12.2004 [hereinafter referred to as “Will”], purportedly executed by DKJ, was granted in favour of one of its named executors, Mr. Sanjay Kalra. The Appellant challenges the validity of the Will, alleging that it is forged and fabricated, and consequently disputes the grant of probate.

3. RFA(OS) 47/2025 assails the Order dated 27.05.2025 passed by the learned Single Judge in CS(OS) 3156/2015, whereby the Appellant’s suit for partition, declaration, rendition of accounts, *mesne* profits, permanent and mandatory injunction in respect of DKJ’s estate was dismissed. It was held that in view of the grant of probate in respect of the Will dated 11.12.2004, the partition suit had become infructuous.

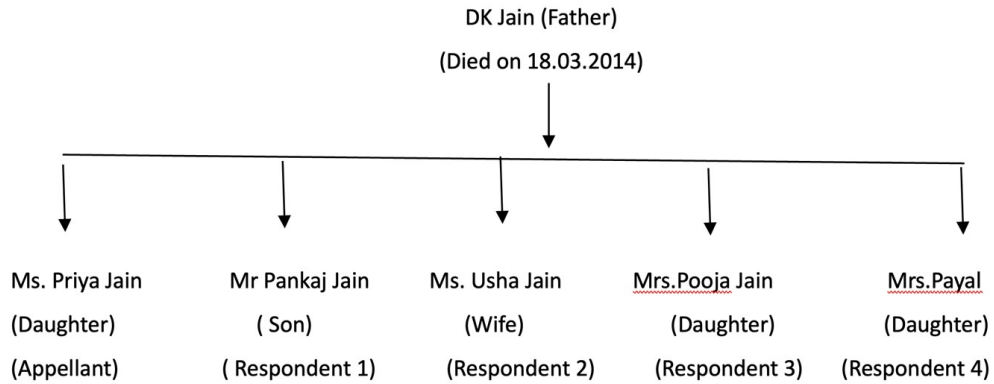
4. With the consent of learned counsel for the parties, both Appeals were heard together and are being disposed of by this common order. For convenience, the facts are primarily drawn from FAO (OS) 82/2025, titled *Priya Jain v. State and Ors.*

FACTUAL MATRIX:

5. The parties are members of the same family, and the dispute centres on the estate of DKJ, who passed away on 18.03.2014. For clarity, the genealogy of the parties is set out below before adverting to the rival contentions.



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6. The Appellant, DKJ's youngest daughter, asserts that the Appellant died intestate and alleges that the Will is forged and has not been duly proved.

7. In contrast, Smt. Usha Jain, widow of DKJ, claims exclusive ownership of the estate based on the Will, an eight-page document, each bearing the signature of DKJ.

8. The Single Judge, after examining the evidence, held that the execution of the Will was duly proved in accordance with Section 63 of the Indian Succession Act, 1925 [hereinafter referred to as "ISA"] read with Section 68 of the Indian Evidence Act, 1872 [hereinafter referred to as "IEA"]. One of the attesting witnesses, PW-2, Mr. Mahesh Gupta, testified before the Court in support of the Will. It was also found that the propounder had sufficiently explained the alleged suspicious circumstances surrounding the Will. Further, it was held that the non-joinder/non-appearance of the co-executor was not fatal in view of Sections 224 and 311 of the ISA, and that no adverse inference arose from the principal beneficiary not entering the witness box.



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9. In light of the aforesaid factual background, the Single Judge *vide* order dated 27.05.2025 in TEST.CAS. 54/2014 granted probate of the Will in favour of Mr. Sanjay Kalra. Consequentially, by order of even date in CS(OS) 3156/2015, the partition suit was dismissed as infructuous, the intestacy claim yielding to the testamentary disposition.

CONTENTIONS OF THE PARTIES

10. The following submissions were made by learned senior counsel representing the Appellant:-

- (i). The Will does not disclose any reason for excluding all the children, particularly the two unmarried daughters, from substantial bequests.
- (ii). DKJ ordinarily spelled his name as “Devendra,” whereas in the Will, it is recorded as “Davinder”.
- (iii). There is a discrepancy in the recorded ages of all the children.
- (iv). There is inconsistency regarding the total shareholding of DKJ in various companies.
- (v). The Appellant disputed the signatures of DKJ; hence, it was incumbent upon the Court to send the Will to the Central Forensic Science Laboratory (CFSL) for handwriting and fingerprint examination.
- (vi). On the last page of the Will, the printed matter appears above the signatures of DKJ.
- (vii). The estate of DKJ had expanded subsequent to the execution of the Will, yet no codicil is alleged to have been



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executed, thereby surrounding the Will with suspicious circumstances.

- (viii) The Will came to light only after the death of DKJ.
- (ix) The Will emerged from the custody of the principal beneficiary.
- (x) Only one executor, Mr. Sanjay Kalra, applied for grant of probate; such an application was not maintainable without the joinder of the co-executor.
- (xi) DKJ died on 18.03.2014 and was cremated on 19.03.2014; however, on the very same day, several resolutions were allegedly passed in meetings of the Board of Directors with the intent to usurp the estate.
- (xii) The attesting witnesses were extended undue favours, such as increments, in order to secure their support for the Will, rendering their testimony suspect.
- (xiii) The principal beneficiary of the Will failed to step into the witness box, warranting an adverse inference.
- (xiv) The Will, being unregistered, could have been fabricated at any time; the name of the scribe is unknown, and DKJ was not expected to execute an unregistered Will.

11. These submissions were controverted by learned Senior Counsel representing the Respondents. Referring to various documents executed by the Appellant after the death of her father, it was urged that the Appellant did not dispute the correctness of the Will at the relevant time.



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12. It is submitted that, as per the Appellant's own deposition, DKJ had purchased various properties in her name, which she subsequently sold. The Appellant has admitted her signatures on the relevant documents but has now sought to resile from such admissions.

13. In rejoinder, learned senior counsel representing the Appellant referred to certain documents to show that Mr. Mahesh Gupta was inducted as Director of the company after the death of DKJ, and that this supported the Appellant's case of estate misappropriation.

FINDINGS AND ANALYSIS

14. We have heard learned senior counsel for the parties, ably assisted by their associates, and with their assistance, have carefully perused the paper book and material on record. The controversy essentially revolves around the genuineness, due execution, and validity of the Will dated 11.12.2004 allegedly executed by DKJ, founder of the Luxor Group.

15. DKJ, was not an ordinary individual but a well-accomplished industrialist with considerable exposure to commercial, financial, and corporate matters. Apart from other business ventures, he established the Luxor Group, a leading name in the writing instruments industry. The Will in question comprises ten typed pages, each page bearing the signatures of DKJ. The last page contains his signature alongside the date of execution, attested by two witnesses-PW-2 Mr. Mahesh Kumar Gupta and Mr. V.K. Jain.

16. A careful reading of the Will reveals that DKJ, identified his heirs-his wife, Mrs. Usha Jain, and his children, namely Mr. Pankaj



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Jain, Ms. Pooja Jain, Ms. Priya Jain (the Appellant herein), and Ms. Payal Jain. The document enumerates DKJ's movable and immovable properties and primarily bequeaths them in favour of his wife, with a stipulation that if she were to predecease him, such properties would devolve upon one or more of his children. Two executors were appointed: Mr. Primal Oswal (his brother-in-law) and Mr. Sanjay Kalra (his Chartered Accountant and confidant). It is Mr. Sanjay Kalra who filed the petition for probate under Section 276 of the ISA.

17. It is not in dispute that the Will deviates from the principles of natural succession, in that it confers the bulk of the estate upon one heir, to the exclusion or partial exclusion of others. However, the law imposes no obligation upon a testator to record reasons for unequal bequests, provided the document is otherwise duly executed and free from suspicious circumstances.

18. Clause V of the Will indicates that DKJ consciously considered all family members and made an alternative arrangement for succession in the event his wife dies during his lifetime. This shows he was aware of the uncertainties of life and had planned the distribution accordingly. The Will stood for nearly a decade before his demise on 18.03.2014 without being revoked or altered.

19. The objection regarding the spelling variation of the executor's name ("Davinder" versus "Devendra") is immaterial, as the phonetic similarity and contextual identification leave no doubt as to the intended person.



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20. Likewise, the absence of precise quantification of DKJ's shareholding in various companies is of no legal consequence. The Will contains a residuary clause bequeathing "all other property" to his wife, which would cover such corporate interests.

21. Clause 7 of the Will expressly directs that the entirety of DKJ's estate, including unspecified assets, shall belong to his wife absolutely, with a further stipulation that in the event of her predecease, such assets shall devolve equally upon the four children.

22. The Appellant initially challenged the genuineness of DKJ's signatures on the Will, contending that the paper appeared too new for 2004 and alleging post-execution fabrication. Her objections reserved the right to seek forensic examination. However, despite opportunity, no handwriting or fingerprint expert was produced in evidence. Para A whereof reads as under-

" a. That the Objector had sought the permission of this Hon'ble Court to examine the purported original Will, which had been placed in a sealed cover, which was allowed by this Hon'ble Court vide order dated 26.06.2014. On such examination, it was revealed that the purported Will is typed on a fresh whitepaper which clearly does not appear to be of the year 2004, i.e. ten years old and as such, on the fact of it, appears to be forged and fabricated. It is further submitted that it appears that the contents of the said purported Will have been typed out after getting the signatures of Late Mr.D.K. Jain on blank papers much after the year 2004, apparently on different occasions. The objector herein reserves her right to get the Purported Will examined forensically or other expert procedures to test the genuineness, authenticity and veracity of the Purported Will. The Objector herein also seeks the liberty of this Hon'ble Court to produce the report of the handwriting and signature expert as and when the same is available to the Objector herein."



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23. In stark contrast to her pleadings, the Appellant, in several contemporaneous documents, including a Relinquishment Deed dated 12.05.2014, sworn affidavits, and a Memorandum of Understanding (MOU) dated 11.06.2014- explicitly acknowledged the validity of the Will and DKJ's signatures thereon. She undertook to file a "No Objection" to the grant of probate (paragraph 8) and admitted her mother's status as successor under the Will. Paragraph 8 of the MOU is extracted as under-

8. You have acknowledged the validity of the WILL of your father under, which I am his successor and you have no objection to the implementation of the WILL. Pursuant to that, you will sign, simultaneously with acceptance and acknowledgment of this letter, Affidavit of No-Objection to the grant of the Probate Petition titled as TEST CAS No. 54/2014 in the Delhi High Court. Further, you will sign as required any other documents that I consider necessary for implementing the succession.

24. The record further shows that on 15.03.2016, the Appellant transferred 50,000 equity shares in Eden Park Hotels Pvt. Ltd. to her mother for Rs. 2,06,00,000/-, and secured release of FDRs worth Rs. 2,70,00,000/- from Canara Bank. These transactions were undertaken in pursuance of family arrangements premised on the Will's validity. Paragraph 6 of the MOU as well as paragraph 6 of the Agreement dated 15.03.2016 respectively are extracted as under-

6. I will get your FDR for an amount of RS.2.66 Cr. (presently under lien in an overdraft facility) released as soon as I have liquidity to do so.

6. That it is agreed that the transfer of 50,000 Equity Shares has been voluntarily agreed by the Transferor out of her free will and volition and this transfer upon complete payment as detailed above in favour of the Transferor shall be absolutely irrevocable and Transferor shall have no right to challenge the said transfer at any point hereinafter, subject to compliance of



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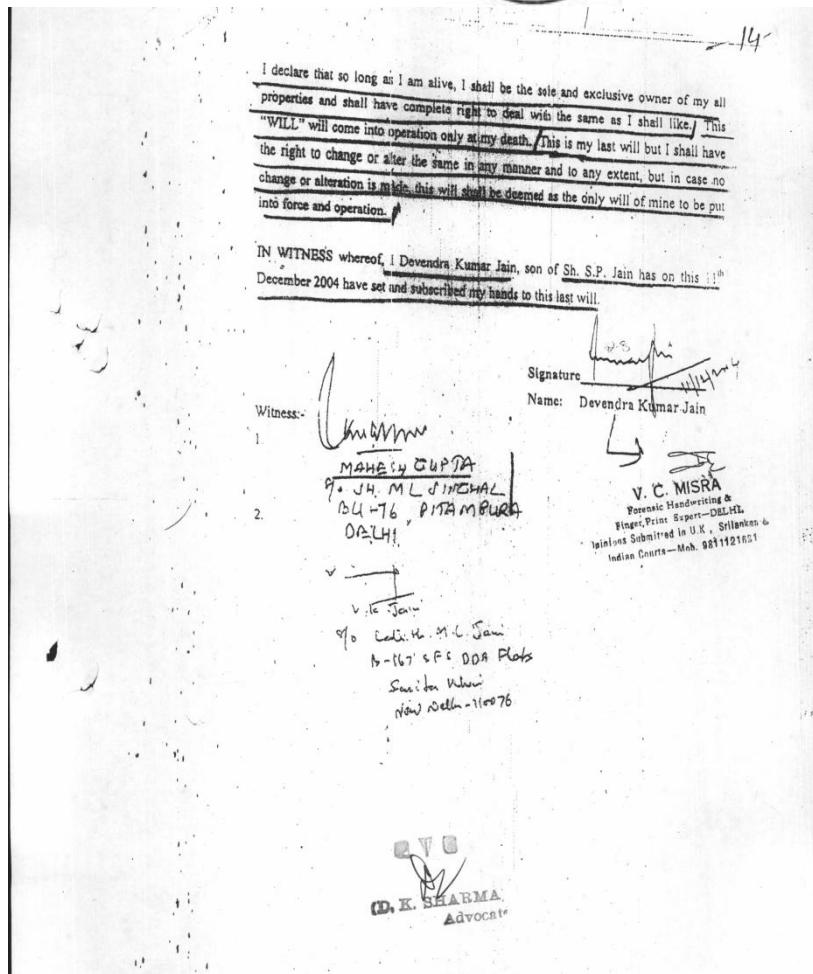


all conditions stated above. The Transferee shall not sell or deal with these 50,000 Equity Shares, till all the terms of the Agreement are complied with by the Transferee.

25. The Appellant further seeks to rely on Clause 5 in the Agreement dated 15.03.2016 stating it was “without prejudice” to rights in the probate petition. However, earlier acknowledgements of the Will’s genuineness, made voluntarily and acted upon to Appellant’s financial benefit, remain significant admissions under the law of evidence. Paragraph 5 of the Agreement dated 15.03.2016 reads as under:-

5. The pending dispute between the Transferor and Transferee qua the probate matter bearing Test Case No. 54/2016 filed by Sanjay Kalra and pending in the Hon’ble High Court of Delhi at New Delhi has not been settled and this Agreement between the Transferor and Transferee is without prejudice to the respective rights and contentions of the Transferor and Transferee in the said probate petition which each of the party is free to assert.

26. The next argument of learned counsel representing the Appellant regarding the genuineness of DKJ’s signatures on page 10, also lacks merit. Pages 1 to 9 bear signatures of DKJ at the blank space left at the bottom, and on page 10, the signature of DKJ is positioned adjacent to the printed name. This variation is neither unnatural nor suggestive of forgery, particularly when no forensic report disproves it. A photograph of the signatures of DKJ on the page 10 is extracted as under:-



27. Next, the submission no. (vii) of the learned counsel for the Appellant is also meritless. The absence of a codicil despite alleged expansion of the estate is equally inconsequential. Clause 7 of the Will already covers all remaining and future assets. The law does not mandate execution of a codicil for such circumstances.

28. The fact that the Will surfaced after DKJ's death is unremarkable; testamentary documents naturally take effect posthumously. The further objection that the Will came from the custody of the principal beneficiary also loses force here, given that the beneficiary is none other than the widow of the deceased. Hence, it



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will not be appropriate to doubt the correctness of the Will on the ground that it has come from the custody of the beneficiary under the Will.

29. Undoubtedly, the petition under Section 276 of the ISA was filed by the one of the executors namely Mr. Sanjay Kalra. However, on 30.10.2015, Mr. Primal Oswal gave letter Ex.PW1/C along with a supporting affidavit. Moreover, Section 311 of the ISA permits the Court to grant letter of administration to one of the executors. From reading of the Will, it is evident that DKJ nominated his two executors. However, there is no prohibition in the Will by the Testator prohibiting grant of letter of succession in favour of one of the executors.

30. Moreover, it would not be appropriate to draw inference that the Will is forged merely because the Board resolutions were passed on the day of DKJ's cremation. Similarly, there is no evidence to prove that Mr. Mahesh Kumar Gupta, an employee of DKJ has been given undue benefits including increments. Even if increments were given to employees, that does not establish fabrication of the Will.

31. Section 68 of the IEA requires proof by at least one attesting witness. In the present case, PW-2 Mr. Mahesh Kumar Gupta testified that DKJ signed the Will in his presence and in the presence of the other attesting witness, Mr. V.K. Jain. His testimony withstood cross-examination. PW-1 Mr. Sanjay Kalra corroborated the signatures based on his longstanding professional association with DKJ.



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32. The adverse inference principle has no application, as the Will was duly proved through an attesting witness. The beneficiary, Smt. Usha Jain, was not present at execution and her non-appearance in the witness box does not affect the proof of the Will. Hence, it is not appropriate to draw adverse inference for failure on account of fact that Smt. Usha Jain failed to enter the witness box.

33. Lastly, the contention that the Will is required to be registered is also immaterial. Section 63 of the ISA does not require a Will to be registered. The unregistered status, in the face of unimpeached attesting witness testimony, does not raise suspicion, particularly when one of the attesting witnesses has supported the Will and credibility of his deposition could not be impeached despite his lengthy cross-examination.

34. In light of the above, we find no merit in the present Appeals. The Will stands duly proved in accordance with law, free from suspicious circumstances, and reflective of the testator's volition.

35. Both Appeals are, accordingly, dismissed. All pending applications also stand disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 19, 2025/sp/pallavi