



2025:DHC:9383-DB



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

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*Judgment reserved on: 23.09.2025*

*Judgment pronounced on:28.10.2025*

+ FAO(OS) 55/2023 & CM APPL. 21903/2023

MEERA SAWHNEY & ANR. ....Appellants

Through: Mr. Brajesh Kr. Srivastava, Mr.  
Manoj Yadav, Mr. Umesh Kr.  
Gupta, Advs.

versus

STATE & ANR. ....Respondents

Through: Ms. Mala Goel, Ms. Renu  
Narula, Mr. Parvinder and Ms.  
Mahi Panwar, Advs. 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**

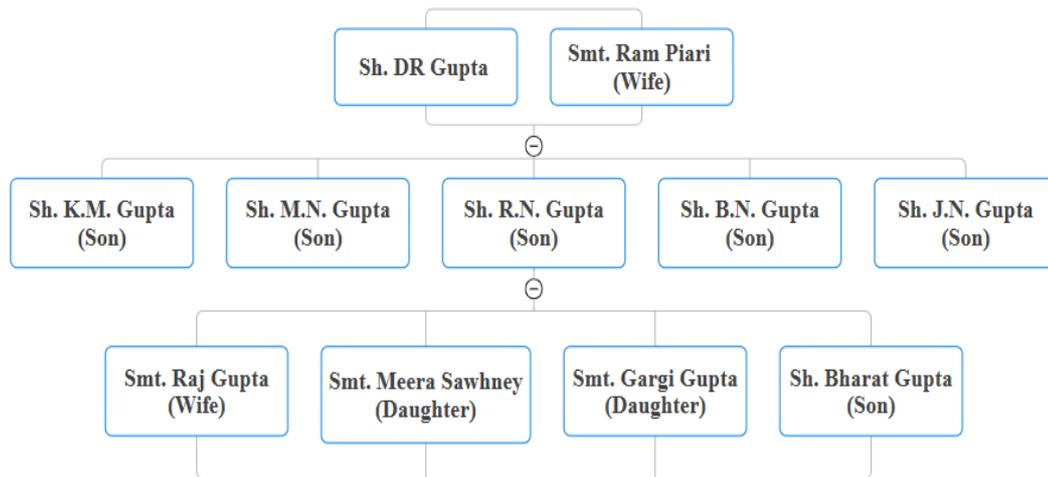
**ANIL KSHETARPAL, J.**

1. Through the present Appeal, the Appellants assail the correctness of the judgment and order dated 20.02.2023 [hereinafter referred to as the 'Impugned Judgment'] passed by the learned Single Judge [hereinafter referred to as 'LSJ'], whereby the Probate Petition filed by the Respondent No.2, seeking probate in respect of the first and final Will and Testament dated 17.09.2000, registered on 22.09.2000, [hereinafter referred to as 'subject Will'] executed by late Sh. R.N. Gupta [hereinafter referred to as 'RNG'] for his immovable and moveable assets, was allowed.



## FACTUAL MATRIX:

2. In order to examine the issue involved in the present case, it is imperative to cull out the relevant facts in brief, which are set forth hereinafter. Before moving to the facts of the present case, this Court deems it appropriate to provide a family tree of RNG:



3. RNG passed away on 14.02.2006, leaving behind his widow, Smt. Raj Gupta, and their children namely Smt. Meera Sawhney/Appellant No.1, Smt. Gargi Gupta/Appellant No.2 and Sh. Bharat Gupta/Respondent No.2. RNG, through the partition of his father's HUF property known as D.R. Gupta & Sons, by way of Memorandum of Family Settlement dated 01.04.1999 [hereinafter referred to as 'MOFS'] got a 1/5<sup>th</sup> share of undivided property bearing Bungalow no.4, University Road, Delhi measuring 25750 sq. yds [hereinafter referred to as 'undivided property'].

4. Thereafter, *vide* the subject Will, RNG bequeathed all his moveable and immovable properties, including his share in the undivided property to his wife, Smt. Raj Gupta, while excluding all



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his children from inheritance during both his and his wife's lifetime. It is also of relevance to highlight that Smt. Raj Gupta also executed a mutual Will on the same date. After the demise of RNG, the Respondent No.2/son instituted a Probate Petition before the LSJ in the capacity of the executor of the subject Will, however, the same was contested by both the Appellants/daughters.

5. In pursuance thereof, the LSJ, upon observing the genuineness of the subject Will, ultimately allowed the Probate Petition in favour of the Respondent No.2 (Petitioner in the Probate Petition). Aggrieved by the same, the Appellants (Respondents in the Probate Petition) instituted this Appeal.

### **CONTENTION OF THE PARTIES:**

6. This Court has heard learned counsels for the parties at length and with their able assistance has perused the paper book as well as the trial court record.

7. Learned counsel representing the parties have filed their respective submissions which are examined hereinafter.

8. Learned counsel for the Appellants while controverting the findings of the LSJ has made the following submissions:

8.1 It is contended that despite the oral submissions made and written arguments placed on record, the LSJ failed to take into account that a civil suit regarding the partition of the HUF is pending before the Tis Hazari Court, New Delhi, whereas a separate suit for



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appointment of Karta is also pending adjudication before the Supreme Court.

8.2 It is contended that the LSJ erroneously held that RNG had a 1/5<sup>th</sup> share in the undivided property. To substantiate the aforesaid, it has been submitted by the Appellants that since the MOFS was neither proved nor registered or signed by all coparceners, it does not qualify as a legally valid document as per Registration Act, 1908 or Section 6 of the Hindu Succession Act, 1956 [hereinafter referred to as 'HSA']. Additionally, it is also submitted that following the 2005 Amendment to the HSA, the Appellants became coparceners and since the partition was neither registered nor decreed by the Court, the Appellants are also entitled to equal shares in the undivided property.

8.3 The findings of the LSJ to the effect of the validity of the MOFS has also been challenged on the pretext that the same falls outside the testamentary jurisdiction exercised by the LSJ in a Probate Court.

8.4 The Appellants, in addition to the aforesaid, have submitted that there were five serious suspicious circumstances revolving around the subject Will which were ignored by the LSJ. *Firstly*, the subject Will surfaced after six years of its execution; *secondly*, the son was appointed as an executor despite him being disinherited by RNG; *thirdly*, there were discrepancies in the description of the properties mentioned in the subject Will; *fourthly*, the undivided property was subject to mutual Will which was concealed till the demise of RNG and *lastly*, the validity of the MOFS was also not considered.



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8.5 The Appellants also goes on to state that the subject Will is vague, coercive and unenforceable, particularly when the undivided property appears to be a part of a mutual/contingent Will, which is void as per Section 61 of ISA.

8.6 Lastly, it is contended that the LSJ ignored the fact that the Single Bench of this Court in a separate Civil Suit has appointed a new female Karta of the undivided property *vide* judgment dated 22.12.2015 thereby affecting the legal status of the estate.

9. *Per contra*, learned counsel for the Respondent No.2 has made the following submissions:

9.1. Controverting the submissions made by the Appellants with respect to the suspicious circumstances surrounding the subject Will, reliance has been placed on the testimony of PW1/Respondent No.2 that the execution of the subject Will was done by RNG in full possession of his mental and physical faculties. Relying on the application of the Armchair Rule, it has been submitted that such application supports the conclusion that the Will was natural, voluntary and genuine. To substantiate the mental and physical state of RNG, reliance has been placed on the key positions held by him including Chairman/Director in several Trusts and Companies, execution of Supplementary Deed of Daulat Ram Public Trust, filing and signing of legal pleadings including the eviction suits and filing of ITRs of the Appellants in India as their attorney, all of which form a part of the Trial Court Record.



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9.2. In addition to the aforesaid, it has also been contended that during the intervening period of six years, the subject Will was neither changed, altered, varied nor revoked by RNG. Whereas with regard to the subject Will being coercive, it has been submitted that the PW-2/ Adv. S.K. Mehra was the one who drafted the subject Will after discussing the same with RNG. Additionally, reliance has also been placed on the witness testimonies of PW-4/Adv. Mukta Kapoor and PW-5/Adv. Anupama Kaul, to submit that the subject Will was attested by these two witnesses who have not only proved that RNG read and signed the subject Will but also identified his signature on the testament while simultaneously identifying their own signatures as attesting witnesses to the subject Will.

9.3. With respect to the validity of MOFS and the subsequent competence of RNG to bequeath the undivided property, it is submitted that the validity of MOFS is also corroborated by official property records with the Army reflecting the RNG's 1/5<sup>th</sup> share in the undivided property which is in accordance with Section 30 of the HSA.

**ANALYSIS:**

10. This Court has duly considered the submission advanced by the learned counsel for the parties.

11. At the outset, this Court deems it appropriate to state that the primary and limited scope of a Probate Court is confined to determining the genuineness and due execution of a Will. The Probate Court, being a testamentary court and not a court of civil jurisdiction,



cannot delve into the question regarding the inter se dispute amongst the heirs/beneficiaries with respect to the rights over any property or the validity or efficacy of the family settlements. Such controversies must be pursued in an appropriate civil proceeding. This principle as of today is widely recognized and well-established in the Indian jurisprudence through the plethora of judgments by the Supreme Court including *Kanwarjit Singh Dhillon v Hardayal Singh Dhillon and other*<sup>1</sup>; *Krishna Kumar Birla v Rajendra Singh Lodha*<sup>2</sup>.

12. Therefore, the plea raised by the Appellants with respect to pendency of civil suit for partition of undivided property along with the separate proceedings concerning the appointment of Karta before the Supreme Court are found to be of no relevance to the present proceedings.

13. The LSJ in the Impugned Judgment, while deliberating on the essentials of Sections 59 and 63 of the ISA, has rightly observed that:

*“36. Thus, the question as to whether the Will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Therefore, what is required to be tested is whether the testator had signed the will. Next, it is to be seen whether he understood the nature and effect of the dispositions in the will. Lastly but importantly, whether he put his signature to the will knowing what it contained.”*

14. In the present dispute at hand, after a perusal of the oral and documentary evidence referred by the parties, including the testimonies of PW-2, PW-4 and PW-5, it becomes evident that the subject Will was drafted after having a detailed discussion with RNG,

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<sup>1</sup>(2007) 11 SCC 357

<sup>2</sup> (2008) 4 SCC 300



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thereby ruling out any alleged coercion or undue influence as pleaded by the Appellants. Additionally, the documents placed on record to show that RNG was an active businessman, involved in multiple type of activities including filing of ITRs for the Appellants and travelling abroad amongst others, cumulatively reflect that the disposition under the subject Will was made by RNG in a sound and disposing state of mind reflecting a natural, conscious and voluntary decision.

15. Moreover, the categorical observations made by the LSJ in paragraph nos.45 and 46 while relying upon the testimonies of PW-4 and PW-5, both attesting witnesses to the subject Will, substantiates that the subject Will was read over and the contents of the same were duly understood by RNG before affixing his signature. Additionally, the signing of the subject Will by RNG has been testified and confirmed by the said witnesses to further establish the genuineness of the subject Will. In view of the foregoing circumstances the mandatory requirements for execution stands fulfilled under Sections 59 and 63 of the ISA.

16. As regards to the submissions made by the Appellants regarding the existence of five suspicious circumstances surrounding the subject Will, this Court at the outset notes that the LSJ rightly relied upon the judgments *Anil Kak v. Shahara Raje*<sup>3</sup> and *Leela Rajagopal v. Kamala Menon Cocharan*<sup>4</sup> to observe in Paragraph Nos.53-55 of the Impugned Judgment that the alleged suspicious circumstances has not been well-substantiated by the Appellants as no cogent evidence for

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<sup>3</sup>(2008) 7 SCC 695

<sup>4</sup>(2014) 15 SCC 570



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the same has been placed on record by them. Whereas, on the contrary, the Respondent No.2, as the executor of the subject Will, duly discharged the evidentiary burden, thereby satisfying the conscience of the Probate Court to allow the Probate Petition.

17. Having made the foregoing observations, this Court will now examine the five suspicious circumstances surrounding the subject Will, as contended by the learned counsel for the Appellants before this Court.

18. It has been contended that the subject Will surfaced only after six years of its execution and that the undivided property forming the subject of a mutual Will, was not disclosed until after the demise of RNG. These contentions, in view of this Court, are devoid of merit. It is trite law that a Will is the testamentary document that comes into operation only after the death of the testator. Therefore, the necessity of producing the subject Will arose only upon the demise of RNG, who passed away on 14.02.2006. Pursuant thereto, the Probate Petition came to be registered on 19.02.2007, whereas the office noting in the Trial Court record reflects that the petition was filed on 14.02.2007, coinciding with the date of death of demise of RNG, which falls within a reasonable period. Accordingly, no adverse inference can be drawn from the timing of the production of the subject Will. Furthermore, the Respondent No.2, through the testimonies of witnesses, has established compliance with the requirements provided under Section 63 of the ISA.



19. Similarly, as regards to the non-disclosure of the mutual Will registered by Smt. Raj Gupta, there existed no legal obligation to disclose its content, prior to the demise of the surviving testator. The Supreme Court, in *Dr. K.S. Palansami (D) thr LRs v Hindu Community in General and citizens of Gobichettipalayam and others*<sup>5</sup>, while summarising the mutual wills doctrine, has stated that a mutual will constitutes a contract between the testators, however, it does not attain irrevocability until the demise of one of the testators. Accordingly, the nature of the mutual Will, in the present case, became legally significant only upon the first demise, i.e., of RNG, whereafter its term became relevant and came to the notice of the parties. Therefore, in the opinion of this Court, the non-disclosure of the mutual Will, prior to the demise of either of the testators, does not give rise to any suspicious circumstance.

20. The learned Counsel for the Appellants has also contended that the Respondent No.2 was appointed as an executor of the subject Will despite being allegedly disinherited by RNG. The said contention falls short of merit since it is trite law that naming a beneficiary as an executor does not invalidate a Will or establish undue influence. It is to note that, a propounder, however, is required to prove execution and attestation of the Will, which shall, if contested by the objector, be proved through leading cogent evidence, which the Respondent No.2 has complied with in the present case.

21. Moreover, a plain reading of the subject Will reveals that the three children of RNG were not disinherited perpetually. In this

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<sup>5</sup>(2017) 13 SCC 15



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regard, reliance is placed on clause (c) of the section dealing with immovable properties of RNG under the subject Will, which clearly provides for devolution of the undivided property in scenarios where neither RNG nor his wife survives. The said clause goes on to highlight that, in the event of the undivided property being sold by the other coparceners following the demise of RNG and his wife, all the three children will have 1/3<sup>rd</sup> share in the sale proceeds of RNG's 1/5<sup>th</sup> share in the undivided property. Alternatively, the clause also mentions equal inheritance of the undivided property amongst the three children in a particular eventuality, should there be no sale. Therefore, in view of this Court, the subject Will reflects a reasoned and balanced disposition with no indication of suspicious exclusion.

22. Further, the Appellants have alleged discrepancies in the description of the properties, including the omission of reference to the RNG HUF, to suggest suspicious circumstances. Additionally, a plea pertaining to the validity of the MOFS has also been raised. In this regard, it is pertinent to reiterate that the jurisdiction of a Probate Court is confined to determining whether the document propounded is the last Will and testament of the deceased, duly executed and reflecting testamentary capacity. In the considered view of this Court, both these contentions raised are devoid of merit, in light of the limited scope of a Probate Court's jurisdiction, as already observed in the preceding Paragraph no.11 of this judgment.

23. In view of the aforesaid, the suspicious circumstances raised by the learned counsel for the Appellants, either considered



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individually or collectively, do not give rise to any reasonable suspicion capable of raising doubts on the validity of the subject Will.

24. With regard to the contention raised by the Appellants challenging the jurisdiction of the LSJ to adjudicate the validity of the MOFS, this Court finds no merit in such an argument. A complete reading of the Impugned Judgment makes it manifestly clear that the observation of the LSJ in Paragraph No.52 of the Impugned Judgment, is merely a *prima facie* consideration of the MOFS, solely in the context of arguments advanced by the parties and the validity of the subject Will, without any detailed analysis or reliance on the testimonies of witnesses or documentary evidence.

### **CONCLUSION:**

25. Accordingly, in light of the above findings, it is concluded that the Appellants have failed to demonstrate any illegality, perversity or procedural impropriety in the Impugned Judgment. In such circumstances, this Court is not inclined to allow the present Appeal.

26. Hence, having found no merit, the present Appeal, along with the pending application, stands dismissed.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**

**OCTOBER 28, 2025**

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