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

% ***Judgment Reserved on: 28.11.2025***
Judgment pronounced on: 05.12.2025

\+ FAO 206/2004 & CM APPL 34048/2023

NIRMAL BHATLA & ORS. .....Appellants

Through: Mr. Sudhanshu Batra, Senior Advocate with Mr. Bhuvan Gugnani, Mr. Rupender Sharma, Advocates.

versus

STATE & ORS. .....Respondents

Through: Mr. B.K. Sood, Mr. Manik Sood and Ms. Jyotsna Bhardwaj, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. The present appeal under Order XLIII Rule 1 of the Civil Procedure Code, 1908, (the CPC) read with Section 299 of the Indian Succession Act, 1952, (the ISA) assails the judgment dated 25.05.2004 passed by the learned Additional District Judge, Delhi in PP no. 339/85 granting probate of a Will dated 23.04.1984

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alleged to have been executed by late Dr. A.N. Khosla (the testator), who passed away shortly thereafter on 29.05.1984.

2. In this appeal, for convenience and clarity, the parties are being referred to in the same rank as they appeared in the original probate proceedings.

3. The essential facts emerging from the records necessary for the adjudication of the matter are :- The testator is survived by one son, i.e., the petitioner and six daughters, the respondents/objectors. The Will propounded by the petitioner pertains principally to the residential property situated at Japura-B, New Delhi, along with certain movable assets. It is an admitted position between the parties that another immovable property situated at Sunder Nagar, New Delhi, had already been transferred in favour of the petitioner during the lifetime of the testator.

3.1 The petitioner's case is that his father owned the following properties at the time of his death-

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i.) Plot Nos. 4, 5 and 6 at 15-15A, Dhobalwalla (Now Kalidass) Road, Dehradun;

ii) Plot and building thereupon at 15 Jangpura-B, New Delhi;

iii) 1/6th share in a plot of land owned jointly with other at Solan, H.P.

His father executed a Will dated 23rd April, 1984 whereby the petitioner was named as executor of the Will. Plot No.4 at Dehradun was left to Smt. Dyamanti Chadha and Smt. Urmila Kumara, being his daughters jointly and in equal shares; plot No.5 jointly and in equal share to his two other daughters, namely, Smt. Kamla Ahuja and Smt. Nirmal Bhatla and plot No.6 again jointly and in equal shares to his other two daughters, namely, Smt. Sudershan Lal and Smt. Veena Madhok. The plot and the building at 15 Jangpura-B, as also the land at Solan, were bequeathed to the petitioner as also all other movable or assets that were left at the time of his death. The Will was signed by his father in the presence of witnesses, namely, Mr. Chandra Prakash and Mr. R.D. Khanna

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besides Dr. Rajiv Handa. Mr. Chander Prakash thereafter passed away. The petitioner being the executor of the Will desires to obtain probate to implement the last wish of his father. Hence, the petition under Section 276 of the ISA.

3.2 Objection was filed on behalf of four daughters of the testator, namely, Urmila Kumra, Kamla Ahuja, Nirmala Bhatla, and Veena Madhok. They contended that the Will dated 23.4.1984 relied on by the petitioner is a forged and fabricated document and that it had never been executed by their father. On the date of execution of the alleged will, their father was incapable of understanding the nature of his acts and was not in a sound disposing state of mind and had no testamentary capacity.The deceased suffered paralytic attacks in the year 1972 and thereafter suffered seven more attacks due to which his mental faculties had been impaired. As degeneration had set in, the deceased was not in a sound disposing state of mind in April1984 when the Will is alleged to have been executed. He thereafter passed away in May

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1984.Theobjectors have obtained information that earlier a Will had been executed by their father, which was either registered or lodged with the State Bank of India. The petitioner is in possession of the copy of the same and has concealed the same with ulterior motives. The objectors are trying to trace out the same and they reserve their right to amend, alter and vary pleadings, if the same is traced out.The Court has no jurisdiction to try the petition as the deceased had left properties of the value of more than ₹ 10,000/- in other States. On these grounds they prayed for a dismissal of the petition.

3.3 The parties went to trial based on the aforesaid pleadings. The petitioner examined himself as PW1, the attesting witness PW2 and the attending doctor PW3 were also examined. Exhibits PW1/1 and PW1/2 were marked. The objectors were examined as RW-1 to RW-4.

3.4 On consideration of the materials placed on record and the evidence led by the parties, the trial court found that the Will dated

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23.04.1984 had been duly proved in accordance with law and that the objections raised by the objectors did not merit acceptance. Probate was accordingly granted.

4. Aggrieved, the present appeal has been preferred by the three daughters of the testators namely, Nirmal Bhatla, Veena Madhok and Sudershan lal, the first two had filed objection before the trial court but the third one never filed any objection.

5. The learned senior counsel appearing for the objectors, opposing the grant of probate, submitted that the petition as framed was wholly misconceived and not maintainable in law. It was urged that the petitioner sought probate only in respect of the property situated in Delhi, though Exhibit PW1/2, the alleged Will dated 23.04.1984 dealt with various assets situated outside the territorial jurisdiction of the Court and valued far more than ₹10,000/–. Reliance was placed on Section 273 of the ISA to contend that probate must be of the entire Will and not of a part thereof, and that the petition deserved dismissal for want of

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territorial jurisdiction. It was urged that the trial court had erroneously applied the ratio of the decision in **Mary A. Trinidade v. Cincent Trinidade**, ***1976 RLR 212***, which was confined to a petition for letters of administration and had no application where an executor is named and probate of the entire Will is sought.

5.1 It was further submitted that the deceased, who was 92 years of age at the time of the execution of the alleged Will, was not in a sound and disposing state of mind. To augment his contention, the learned senior counsel drew the attention of this court to the admitted fact that the testator had suffered two paralytic attacks, the latter 1½ years prior to his death, resulting in paralysis of the right side of his body and consequent damage to the left portion of the brain. Reliance was placed on Ex. PW-1/RX-3, an application for transfer of National Savings Certificates dated 05.01.1983, wherein the deceased recorded that owing to "*cerebral vascular disease and residual weakness*" he was "*not in a position*

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to write but can only put his thumb impression." This document, according to the objectors, raised a serious doubt regarding his mental and physical capacity to execute a Will in April 1984.

5.2 The learned senior counsel stressed that despite the admitted medical deterioration, no medical record(s) whatsoever was produced by the petitioner propounder, nor was any doctor treating the deceased for neurological ailments examined. PW-3was admittedly a general physician who merely attended to bedsores and routine ailments and was neither a neurologist nor aware of the treatment administered to the deceased during 1983–84. It was argued that the absence of medical evidence constituted a grave suspicious circumstance, reliance being placed on the dictum in ***Yashoda Gupta v. Suniti Goyal***, **2001 (6) AD (Delhi) 415**, where the failure to produce medical records of an ailing testator was held to cast serious doubt on the testamentary capacity. The objectors further cited the principles laid down in ***H. Venkatachala Iyengar v. B.N.***

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***Thimmajamma,* AIR 1959 SC 443**, ***Rani Purnima Debi v. Kumar Khagendra Narayan Deb*, AIR 1962 SC 567**, and ***Jaswant Kaur v. Amrit Kaur*, AIR 1977 SC 74**, to reiterate that the propounder carries a heavy and solemn burden to remove all genuine suspicions before a Will can be accepted as valid.

5.3 The learned senior counsel would further submit that the execution of the Will was surrounded by several suspicious circumstances which the petitioner failed to explain. It was contended that the Will, though purported to have been executed by a highly educated and distinguished individual—a former Vice-Chancellor, Member of Parliament and Governor of Orissa, was unregistered and bore only a left thumb impression, despite the left hand being admittedly unimpaired. PW-3's assertion that he "lifted the hand" of the deceased to obtain the thumb impression was highlighted as wholly inexplicable if the unaffected left hand was being used. It was urged that the beneficiary (petitioner) was present throughout and was the

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principal legatee under the Will—a circumstance treated as inherently suspicious in **Raja Ram Singh Vs. Arjun Singh,** ***AIR 2002 Delhi 338***, ***Brahmapal Singh v. Ram Dulari*** **AIR 1981 NOC 32**, and ***Harbans Singh v. Hardayal Singh***, **1996 (2) HLR 252**. The learned senior counsel also referred toExhibits **PW1/RX2** and **PW1/RX3** to demonstrate that the petitioner had begun transferring assets of the deceased into his own name even during the latter's lifetime, further deepening doubts as to undue influence.

5.4 It was further urged that PW-1 to PW-3 have given mutually contradictory testimonies on material aspects. PW-1 stated in cross-examination that the Will took one hour to write and execute yet elsewhere deposed that it had been prepared two years earlier and merely thumb-marked on 23.04.1984. PW-2 and PW-3 expressly stated that no discussion regarding the Will or its contents took place in their presence, contradicting PW-1's version. Their testimony regarding the physical condition of the

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deceased was also inconsistent *inter se*. These contradictions demonstrated that the attesting witnesses were interested**,** unreliable and tutored, especially since PW-3 was related to the wife of the petitioner. It was further submitted that the petitioner concealed the true assets of the deceased. Though Annexure-A to the petition declared that the testator left "NIL" assets, the evidence disclosed joint bank accounts and other properties reflected in PW-1/RX-1 to PW-1/RX-3. The unnatural disposition in favour of the son—who had already been gifted a valuable house in Sunder Nagar—was stressed as incompatible with the known wishes of the deceased and as an additional suspicious circumstance within the meaning of **Harbans Singh** (*supra*) and **Venkatachala Iyengar** (*supra*).

5.5 It was lastly contended that the trial court adopted a prejudiced and erroneous approach, misconstruing the testimony of RW-3, ignoring the admitted medical condition of the deceased, and placing undue reliance on documents of 1982 although the

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second paralytic attack occurred subsequently. It was urged that the cumulative effect of all these circumstances made it impossible for the judicial conscience to be satisfied that the alleged Will represented the free, conscious and voluntary act of the deceased, and that the petitioner propounder had "miserably failed" to discharge the burden cast upon him under the law. Reliance was again placed on **Venkatachala Iyengar** (*supra*) to contend that unless all legitimate suspicions are removed, probate cannot be granted.

6. *Per contra*, the learned counsel for the petitioner supported the impugned judgment and submitted that the present appeal was wholly incompetent. It was urged that two of the appellants herein had never filed objections to the probate petition. Objections were filed by respondent Nos. 2, 3, 4 and 6 in the petition, i.e. Urmila Kumra, Kamla Ahuja, Nirmal Bhatla and Veena Madhok respectively, even though it had been only signed by respondent Nos. 2 and 3. However, Respondent Nos. 2 and 3 neither entered

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the witness box nor adduced any evidence, and significantly had not even chosen to contest or support the present appeal. The appellants, despite not being objectors before the trial court, appeared as witnesses and now seek to challenge a judgment to which they were never parties in objection. The appeal, therefore, it was contended, is liable to be dismissed on this short ground alone.

6.1 The learned counsel next submitted that the objectors' evidence was wholly unreliable and contradictory. Objector no. 1, examined as RW-3, had filed no objections, volunteered statements before the trial court and then resiled from them on the next date. Her testimony was duly disbelieved by the trial court. Although RW-3 has a case that the deceased was "a vegetable," she admitted that she never got him treated for any ailment. Her statements stood contradicted by the documents on record as well as by objector no. 2 (RW-2). RW-2 admitted that she was residing in Bombay at the time of her father's death, remained outside

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Delhi for a long period, and was not attending to his medical or personal needs. She further acknowledged that the testator continued to manage his own affairs till the middle of 1982 and identified his signatures and photographs (Ex. RW1/P1 to P6). Neither of the objectors could name any doctor who is contended to have treated their father for the ailments asserted by them.

6.2 The learned counsel for the petitioner would further argue that the objectors' evidence did not support the objections originally taken by respondent nos. 4 and 5. On the contrary, it stood established on record that the Will was duly executed in the presence of the attesting witnesses. One of the attesting witnesses died when evidence commenced, but the surviving attesting witness was examined and nothing adverse emerged in his cross-examination. PW-3, the doctor who attended to the testator in his last days was also examined, and he conclusively proved both the mental fitness of the testator and the due execution of the Will, including attestation of the thumb impression.

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6.3 It was further urged that the plea of an earlier registered Will of the deceased was raised by the objectors themselves as well as by respondent nos. 4 and 5. However, none of them produced the said Will despite ample opportunity being given. The petitioner, during his own evidence, produced a certified copy of a registered Will executed in the year 1958 at Saharanpur, at which time, the testator was Vice-Chancellor of Roorkee University. This Will bequeathed the entire estate to the testator's wife, and in her absence to the petitioner as the sole executor and beneficiary. The objectors and respondents 4 & 5 opposed even the placing of its certified copy on record on the ground of lack of pleadings, despite the petitioner moving an appropriate application under Sections 63 and 65 of the Evidence Act as well as Section 90 seeking its acceptance. The trial court rightly allowed the application by order dated 05.03.2002.

6.4 The learned counsel further submitted that an attempt was made at the final stage of the proceedings to delay the conclusion

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of the trial. Objector no. 1, who had never filed objection, moved an application under Order XI Rules 12 and 14 CPC seeking production of medical records of the deceased. The trial court rejected the application by a detailed order dated 13.02.2004. The objectors neither challenged that order nor have they questioned it in the present appeal. It was submitted that no grievance can survive regarding absence of medical records when the objectors abandoned all legal remedies against the rejection of their application.

6.5 The learned counsel further submitted that the findings of the trial court are based on sound appreciation of evidence and required no interference. The attesting witnesses have duly proved the Will in accordance with Section 63 of the ISA and Section 68 of the Evidence Act. The doctor had spoken to the lucidity, awareness and mental capacity of the testator at the time of execution. The testator, a distinguished person, had executed earlier Wills making similar dispositions. The present Will,

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therefore, represented a consistent pattern of testamentary intention. The alleged suspicious circumstances were argued to be imaginary, unsupported by evidence, and contradicted by the objectors' own admissions.

6.6 In support of his submissions, the learned counsel for the petitioner placed reliance on the decision in **Savithri v. Karthyayani Amma, AIR 2008 SC 300**, wherein it was held that mere allegations of undue influence or deprivation of certain natural heirs do not, by themselves, constitute suspicious circumstances when the Will is otherwise natural in its disposition, properly attested, and its execution duly proved in accordance with law. It was submitted that the ratio of the said judgment squarely applies to the present case, as the statutory requirements of execution and attestation stand fully satisfied and the evidence of the attesting witness as well as the attending doctor inspires complete confidence.

7. Heard both sides and perused the records.

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8. The central issue that falls for consideration is whether Exhibit PW1/1, the Will dated 23.04.1984, propounded by the petitioner, stands proved in accordance with Sections 63 of the ISA and 68 of the Evidence Act, and more importantly, whether the circumstances surrounding its execution inspire the confidence of the Court as required by the settled principles governing proof of Wills.

9. At this stage, it is also necessary to clarify the distinction between the burden of proof and the onus of proof. The burden of proving due execution of a Will in terms of Section 63 of the ISA and Section 68 of the Evidence Act, rests squarely and throughout upon the propounder and does not shift. The onus of proof, however, being evidentiary in nature, shifts during the course of the trial; once the propounder establishes the foundational elements of execution and attestation, the onus moves to the objector to substantiate the allegations of undue influence, coercion, fraud or suspicious circumstances. If such circumstances

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are established, the onus may again shift back to the propounder to remove them. This shifting onus does not, however, alter the constant legal burden which remains with the propounder.

10. At the outset, certain foundational and undisputed facts need to be noticed. It is not in controversy that the testator, was of advanced age and was physically infirm in the period preceding his demise. It is also not disputed that he was largely bedridden in the last months of his life and was residing with the petitioner at property No. 15, Jangpura-B, New Delhi. It further stands out from the evidence of RW-1 to RW-4 that none of the daughters resided with or continuously attended to the testator during this final period; most of them admittedly met him occasionally or intermittently. The petitioner was therefore the person who was in regular proximity with the testator in his last years. These facts, which emerge clearly from both sides of the record, form the background against which the controversy must be evaluated.

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11. Before I proceed to analyse whether due execution and testamentary capacity stand proved, it is necessary to briefly notice the testimony of the material witnesses.

12. PW-1, the petitioner, when examined deposed that when his father died on 29.5.84, the latter was 92 years; that the death certificate is Ex.PW 1/1; that his father was Vice Chancellor, Roorki University, then member of planning Commission, and thereafter retired as Governor of Orissa; at the time of his death he was living with PW1; that the deceased left a Will dated 23.4.84; that the testator was mentally alert and in his senses at the time of his death; that after retirement as Governor of Orissa, the deceased was living with him all along till death at 15, Jangpura B, Mathura Road, New Delhi; that his father suffered paralytic attack about a year before his death; that even after the attack his father was mentally active and was attending to his affairs; that his mother predeceased his father; that his father's right hand was weak after the paralytic attack and so he could not sign with his right hand

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and hence used to put his thumb impression; that his father had executed the will in his presence, at which time Chander Prakash and Dr. Rajeev Handa were present; that the will had already been prepared by his father about 2 years before its execution and after preparing it, his father had kept it in his bag but it was thumb marked by him on 23.04.1984 in the presence of the aforesaid persons; that his father had thumb marked on the will after reading and understanding the contents thereof by himself; that it was first signed by Chander Prakash, then by R.D. Khanna and lastly by Dr. Rajeev Handa. R.D. Khanna and Chander Prakash signed on the will as attesting witnesses. PW1 identified the thumb mark of his father as well as his will and the signatures of the attesting witnesses in the will, which was marked as Ex-PW1/2. He further deposed that in 1993; he came to know that his father had executed a will in 1958 which was registered at Saharanpur. When he came to know of the same, he obtained a certified copy of the said registered will from the office of Sub Registrar at Saharanpur.

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12.1 In the cross examination PW-1 deposed that his father had suffered a paralytic attack in 1970; that he does not remember the hospital where his father had been treated for the paralytic attack; that his father used to visit hospitals for check-up frequently after his 2nd attack; his father used to be escorted on wheel chair from the house to the car during his visits to the hospital. PW1 admitted that his father could not walk without support after his 2nd attack and that he needed support for even going to the toilet. He also admitted that his father was virtually bedridden after his 2nd attack. PW1 further admitted that after the second paralytic attack his father was incapable of handling routine office work or paper work by himself. His father suffered a paralytic attack for the second time about an year before his death due to which his right side was effected. According to PW1, it took about an hour for the preparation and execution of the Will. The discussion on the will and the process of signature was completed during the said one hour time. He knows Chander Parkash as he is the son of his

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father's colleague. Dr. Rajeev Handa, their family doctor, had been treating his father for the paralytic attack besides his other ailments. He denied the suggestion that his father was incapable of recognising any of his children for two years prior to his death. He also denied the suggestion that after the second paralytic attack his father's whole body as well as brain had been affected. He denied the suggestion that his father wanted his house at Jangpura to be distributed equally amongst all his children after his death.

13. PW2 deposed that he knew the testator as the petitioner was his colleague; that he is one of the attesting witnesses in Ex.PW1/2; that the mental condition of Dr. A.N. Khosla was alright; that the testator could speak but slowly; that his right hand had some problem; that at the time of execution apart from him there were the testator, Chander Prakash, the petitioner and a doctor. On the request of the testator, he agreed to be an attesting witness. The testator put his thumb impression. Chander Prakash signed as the first witness. Thereafter he signed and lastly, the

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doctor also signed. The testator could understand his affairs and was of sound disposing state of mind at the time of the execution of the will.

13.1. In the cross examination PW2 deposed that he does not know the ailment of the testator; that he does not know whether the testator had a paralytic attack; that he does not know what was wrong with the right arm of the testator, but he had difficulty moving his right arm; that the testator could get out of the bed with support; that the will had already been written; that he had not read the contents of the will. He denied the suggestion that the testator was unable to speak on the day of execution of the Will. He also denied the suggestion that the testator was unable to recognise his family members when the Will was executed. PW2 also denied the suggestion that the testator had no control over his body and that he was mentally unstable and indisposed.

14. PW3, Dr. Rajiv Handa deposed that he was attending on the testator; that he used to visit the testator almost daily; that he

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had gone for a routine check-up at which time he was asked to witness the execution of the will. When the will was executed, the testator had normal mental faculty and was of sound disposing mind. Due to paralytic attack, the testator could not hold a pen in his right hand and requested his help to affix the thumb impression of the latter on the will. There were two other persons who were already there when he arrived, and they had attested the will.

14.1. In the cross examination PW3 deposed that he is a general physician and that he does not treat people for neurological problem, but he does follow up of such patients, that is, nursing them. PW3 deposed that he does not know who had been attending to the testator earlier. But after he started attending on the testator, there was nobody else. PW3 was unable to recall the time when the will was executed and attested. But he said it was in the evening. He does not know the person who wrote the will. There was no discussion on the will at the time when it was executed. The testator was in such a state that he required only nursing at

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home. Nothing further could be done. The testator's speech was affected but it could be comprehended. He denied the suggestion the testator had become incoherent in his speech during the period 1983 to 1984, which continued till his death. PW3 denied the suggestion that the testator was unable to recognize his family and children. PW3 admitted that the right upper limb and lower limb of the testator had been affected due to paralysis. He admitted that due to paralysis when a patient's right side is affected, the left portion of his brain would be affected. He denied the suggestion that on 23.4.84 the testator was not in a sound disposing state of mind. PW3 further deposed that he had not carried out any tests to find out whether any portion of the testator's brain had been damaged. He denied that he was in any relation to the petitioner's wife.

15. RW 1 Sudershan Lal, one of the daughters is seen to have filed a statement supporting the case of the daughters. However,

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RW1 is not seen cross examined. Hence her statement cannot be looked into.

16. RW2 - another daughter, has filed statement supporting the case of the objectors. RW2 in the cross examination deposed that at the time of her father's death, in the year 1984, she was in Bombay. She admitted that during the last days of her father, she was not attending to his medical needs as her husband was posted outside Delhi. Till the middle of 1982, her father could manage his own affairs. She denied the suggestion that the mental faculties of her father were normal till his death. She admitted that she had not seen the registered Will, purported to have been executed by her father, while he was Governor of Orissa. But she has heard about it.

17. RW3 - Nirmal Bhatala, another daughter deposed that two years, prior to her father's deathhis mental faculties were not working. He could not recognise anyone; he could not speak even a word; he could not recognize his children; he was not aware, as

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to what was happening around him, or what was being done to him. He could not eat by himself; he could not move his hands or arms. Everything was being administered to him. He was completely bedridden for two years, prior to his death. He could not even change his side. They had put a hole in his bed so that he could ease himself on the bed by himself. Ex.PW1/2 was not executed by her father. Her father had executed a Will, while he was Governor of Orissa during which time her mother was alive. They have been unable to trace that Will. No other will was executed by her father, during his lifetime. The Will propounded by the petitioner is forged one.

17.1. In the cross examination RW3 deposed that the factum of illness of her father was known to all the sisters. In May 1982, she realised that her father had lost his mental and physical faculties. He was in a vegetative state. She cannot name the doctor, who was treating her father. However, one Dr. Saneh Ghadoke, a Neurosurgeon used to visit her father. Dr. Birmani and Dr. D.R.

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Khurana were also treating her father. Dr. Khurana is still available, but she does not know about Dr. Birmani. Dr. Sneh Ghadhok suffered a paralytic attack. The cross examination of RW3 was deferred and later when it was resumed, she *inter alia* deposed that she does not have any record to show that her father suffered heart attacks / paralytic attacks. She denied having earlier deposed to having put a hole in bed of her father so that he could ease himself on the bed itself.

18. RW4 - Sonia Kapre, daughter of Nirmal Bhatla, another daughter of the testator, denied that the testator was in perfect health and sound disposing mind in the year 1982. She supports the case of the objectors.

19. What can be discerned from the aforesaid evidence is that the testator was physically infirm and largely bedridden in the last months of his life. The testator of a will does not have to be found in a perfect state of health or in the "pink of health" to have his will declared valid. The relevant question is whether he possessed

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a sound disposing mind capable of understanding the nature of the act and the disposition he was making. It is sufficient to prove that he was able to give the outline of the manner in which his estate was to be disposed of. (**See Gordhandas Nathlal Patel vs. Bai Suraj & Ors. AIR 1921 Bombay 193 and Chhanga Singh vs.Dharam Singh & Ors. AIR 1965 P&H 204).** As explained in **Har Narain v. Budhram, 1991 SCC OnLine Del 351**, while referring to the principle in **Kishan Singh v. Nichhattar Singh, AIR 1983 P&H 373**, even a testator who is deaf, dumb or suffering from serious physical conditions may execute a valid Will so long as he comprehends the contents and implications of the document.

20. Applying the aforesaid settled position of law, the testator's physical weakness or paralysis in the present case need not detract from his testamentary capacity if it is shown that he was, at the relevant moment, capable of understanding the instrument propounded. The materials on record does show that

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the testator was bedridden due to a paralytic stroke suffered by him but this does not seem to have affected his mental faculties as deposed by PW2 and PW3. On going through the testimonies, I find no reason to disbelieve them as nothing was brought out to discredit their testimony. No reasons have been shown as to why PW2 and PW3 should depose falsehood in order to help the petitioner. Though, PW3 was stated to be related to the petitioner, the objectors were not even able to specify the alleged relationship. Therefore, the testimonies of PW2 and PW3 does support and prove the case of the petitioner that the testator though bedridden due to stroke and not in perfect health, was in a sound disposing state of mind.

21. Considerable emphasis was placed by the objectors on the alleged absence of medical records relating to the testator's condition in 1983–84. However, the record demonstrates that the objectors had ample opportunity during the course of the trial to pursue this aspect. They cross-examined PW-1 at length as far

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back as on 12.05.1997 and thereafter examined their own witnesses as RW-1 to RW-4, yet no suggestion was put to any of the witnesses that relevant medical papers existed but were being withheld by the petitioner, nor was any contemporaneous medical witness summoned. It was only at the stage when the matter had progressed to final arguments that the objectors moved an application under Order XI Rules 12–14 CPC seeking production of medical records. The trial court, by order dated 23.02.2004, rightly held the application to be belated and vague, and dismissed it. In these circumstances, the plea of suppression or non-production of medical documents cannot be accepted as a suspicious circumstance, particularly when the objectors themselves neither produced the alleged records nor pursued their own remedies against the rejection of their application. Further, RW-3 in her cross examination referred to the names of three doctors who had treated her father. She admitted that one of the doctors was still available. If that be so, she could have taken steps

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to examine the said doctor to substantiate her case that her father was in a vegetative state. However, for reasons best known to the objectors, no such attempt was made by them.

22. Much emphasis was placed by the objectors on the existence of an "earlier Will," repeatedly invoked in their evidence and submissions. The record, however, indicates that while the objectors asserted the existence of such a Will, but they did not produce it at any stage. It was, instead, the petitioner who placed on record a certified copy of a registered Will executed and registered by the testator in 1958 at Saharanpur, U.P. That document showed that, at the time, the testator's wife was alive and that he had devised his entire real and personal estate in her favour, and, in the event of her death, in favour of his son, Shri Sushil Nath Khosla (the petitioner herein). Rather than permitting the petitioner to prove the said certified copy, the objectors objected to its production on the ground that it was beyond the scope of the pleadings. The reiterated reference to the "earlier

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Will," unsupported by production of the document relied on by the objectors themselves, appears more directed at creating a smoke screen of doubt than at demonstrating any inconsistency in the testamentary intention of the testator.

23. The inconsistencies pointed out by the objectors in the testimony of PW-1, PW-2 and PW-3—such as the precise time taken in preparation of the Will, or whether the Will was prepared earlier and kept in a bag—do not, in the view of this Court, touch the core requirement prescribed under Section 63 of the ISA. Minor divergences in peripheral details are not uncommon in human recollection and do not by themselves shake the foundational elements of execution and attestation when these stand proved through the testimony of PW2, the attesting witness whose presence has not been discredited. The other attesting witness was no more and hence could not be examined. The inconsistencies pointed out do not affect the essential facts proved by the attesting witness and the attending doctor and therefore do

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not negate the finding that the testator possessed a sound disposing mind when the Will was executed.

24. On the question of suspicious circumstances, the objectors relied principally on the testator's advanced age, physical incapacity, the active involvement of the petitioner, and the alleged unnatural exclusion of the daughters from the Jangpura property. Evaluating these aspects together, this Court is unable to recognise any circumstance of such gravity as would either shake the core of the case propounded by the petitioner or require rejection of the Will. As emphasised in **Har Narain** (*supra*), the mere fact that the propounder was present at the time of execution is not, by itself, sufficient to cast doubt on the genuineness of a Will. The Apex Court has similarly reiterated in **Pentakota Satyanarayana v. Pentakota Seetharatnam, 2005 SCC OnLine SC 1412**, that every circumstance is not a suspicious circumstance, and even active participation by a beneficiary in the execution process does

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not, without more, undermine the testamentary capacity or the genuineness of the Will; mere presence does not amount to "taking a prominent part" in execution nor does it shift the burden unless undue influence, fraud or coercion is specifically pleaded and proved. In the present case, the petitioner's presence is unsurprising as it is not disputed that the petitioner was residing with his father and the daughters were not residing with their father or regularly attending to the testator during the final period of his life. It is true that earlier the father had bequeathed another valuable property situated at Sundar Nagar, Delhi to the petitioner. But that alone also is no ground to suspect the will in question because the whole idea behind execution of the will is to interfere or deviate from the normal line of succession. Further, this is not a case wherein, the daughters have been completely dis-inherited. They have no case that their father had completely disinherited them or had not given them their due share. RW1, one of the daughters who did not offer herself for cross examination is seen

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to have filed a statement that during his lifetime her father had gifted his Sundar Nagar house to the Petitioner and it was his wish that the Jungpura Extension house be shared by his daughters. For the said purpose he had created a trust in respect of Jungpura property and under the terms of the said trust the rent of the said property was to be received by his daughters. That trust was for a limited period of 5 to 6 years and after the trust ceased to exist, her father had notified his intention by writing to her and her other sisters that he wanted the said house to be divided amongst his daughters. She declined to take a share in the Jangpura house during his lifetime because she wanted her father to have some property for himself during his lifetime. None of the objectors have such a case in the objection. If any such trust had been created, then the objectors ought to have taken steps to substantiate the same. However, no such attempt is seen made. Therefore, I do not find any materials to conclude that the disposition is unnatural.

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25. Yet important, another aspect is regarding the contention of the objectors regarding the execution of another will by their father. They do not seem to have made any earnest efforts to trace the same and produce it before the court. However, when the petitioner produced the same, they objected to its production and admission in evidence on the ground that there was no such pleading in the petition. But a pertinent aspect to be noted is that they do not have a case that the 1958 will was forged or fabricated by the petitioner and produced before the court. As per the said will executed way back in the year 1958, the property in question has been bequeathed to the petitioner. Be that as it may, the said will cannot be relied on, as the same has not been proved by examining the attesting witnesses.

26. I also briefly refer to the authorities relied upon by the objectors. The decisions in **Venkatachala Iyengar** (*supra*), **Rani Purnima Debi** (*supra*) and **Jaswant Kaur** (*supra*) reiterate the

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well-established principle that where genuine and substantial suspicious circumstances exist, the propounder must remove them to the satisfaction of the Court. Those judgments, however, turned on fact situations where the Will itself disclosed inherent contradictions, unexplained departures from the natural line of succession, or a demonstrable impairment of the testator's cognitive faculties. No such foundational infirmity is present here. In the present case, the evidence of PW-2 and PW-3 establishes a coherent and consistent account of due execution, and the suspicious circumstances alleged by the objectors rest on conjecture rather than material evidence.

27. Reliance on the dictum of **Yashoda Gupta** (*supra*), **Raja Ram Singh** (*supra*), **Harbans Singh** (*supra*) and **Brahmapal Singh** (*supra*) is equally misplaced. Those cases proceeded on clear proof of undue influence, dominance of the beneficiary, suppression of medical records, or exclusion of natural heirs in

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circumstances very different from the present. Here, the daughters admittedly were not residing with or regularly attending to the testator in his final years, no medical or neurological evidence of incapacity has been produced by them, though ample opportunity was available to them. The factual foundation that justified interference in the cases relied upon by the objectors is wholly absent in the present matter, rendering those authorities inapplicable.

28. The plea that probate could not be granted in respect of only the Delhi property is equally untenable, as the petition itself was confined to the property within the jurisdiction of the court and it lies within the power of the District Judge to grant limited probate effective within the State. The factual record does not disclose any impediment in the trial court exercising jurisdiction on this aspect.

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29. In view of the discussion hereinabove, this Court is satisfied that the petitioner has duly discharged the initial and substantive burden of proving due execution and attestation of the Will in terms of Section 63 of the ISA and Section 68 of the Evidence Act. The testimonies of PW-1, PW-2 and PW-3, taken together, establish the foundational facts required of a propounder. Consequently, the onus had shifted to the objectors to substantiate the allegations of undue influence, coercion, fraud or the existence of any real and legitimate suspicious circumstance. However, the objectors, having neither produced contemporaneous medical evidence nor established any material contradiction(s) going to the root of testamentary capacity or volition, have failed to discharge this shifted onus. The mere reliance on peripheral inconsistencies or broad allegations, unsupported by tangible evidence, is insufficient in law to rebut the presumption arising from the proof of execution.

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30. In view of the foregoing discussion, this Court finds no ground to interfere with the findings returned by the trial court. The appeal is, therefore, devoid of merit and is hereby dismissed. The order granting probate in respect of property No. 15, Jangpura-B, New Delhi, is accordingly affirmed.

31. Application(s), if any pending, shall stand closed.

CHANDRASEKHARAN SUDHA
(JUDGE)

DECEMBER 05, 2025
rs/RN

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