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

% ***Judgment Reserved on: 05.12.2025***
Judgment pronounced on:10.12.2025

\+ FAO 593/2016 & CM APPLs. 46938/2016, 2810/2023
HARMINDER SINGH BAKSHI .....Appellant
Through: Mr. Peeyoosh Kalra, Mr. Yashwant Singh Baghel and Ms. Meghna Nair, Advocates

versus

STATE & ORS .....Respondents
Through: Mr. Sanjeev Kumar Dubey, Sr. Advocate with Mr. Amit Bhatia, Mr. Shahrukh Khan, Ms. Tanya Verma and Mr. Sushil Gupta, Advocates for Respondent No.2

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. The present appeal under Section 299 of the Indian Succession Act, 1925 (the ISA), read with Section 151 of the Code of Civil Procedure, 1908 (the CPC) has been filed by the second respondent in P.C. No.6/15/05 on the file of the Additional District Judge, Tis Hazari Courts, Delhi, aggrieved by the judgment dated

01.10.2016 by which Exhibit PW-1/1 Will executed by his late mother, Sujan Kaur, was held to be valid and genuine.

2. In this appeal, the parties herein will be referred to in the same rank as described in the original petition.

3. The essential facts emerging from the records necessary for the adjudication of the appeal are as follows: - Late Sujan Kaur was the absolute owner of the residential property bearing No. WZ-620, Gali No.19, Shiv Nagar Extension, Jail Road, New Delhi. She was survived by her husband, the petitioner herein, and two sons, namely, late Jasbir Singh, survived by his wife and children, namely, respondents' nos. 3 to 5, and Harminder Singh, the second respondent. The petitioner's case is that his wife executed a Will dated 22.01.1996 bequeathing her entire property exclusively in his favour. The will was attested by four persons, namely, Bakshi Sunder Singh, Ajmer Singh and their sons, late Jasbir Singh and Harminder Singh/respondent no. 2. Along with

the petition for probate filed in May 2005, only a xerox copy of the will was produced. According to the petitioner, the original will had been stolen by his son Harminder Singh, the second respondent/objector. However, during the lifetime of his wife itself xerox copies of the will had been made. Hence, probate was sought on the basis of a xerox copy of the original will.

4. All the respondents except the second respondent reported no objection.

5. The second respondent/objector filed objections denying the execution and validity of the Will. He contended that he had never attested any such will in the year 1996; that the xerox copy of the will produced along with the petition was a fabricated one, and that the allegation of theft of the will was a falsehood and the entire case had been concocted by the petitioner, his father, for depriving him of his rightful 1/3rd share in the property. He had, in fact, filed a suit for partition in which the petitioner, his father, had

contended that he had already sold the property to a third person. Hence, the petition for probate is not maintainable.

6. Replication was filed by the petitioner reiterating his allegations in the petition that his wife had, in fact, executed the will in his favour and that the original of the same had been stolen by the second respondent. According to him, the testatrix had taken xerox copies of the will during her lifetime itself. It was also alleged that the petitioner had filed a complaint against his son, the second respondent, for the theft of the will and that the same was pending consideration. He admitted that the property had been sold. According to him, the sale was of no consequence as the petition was confined to the question of due execution of the will.

7. The parties went to trial on the basis of the aforesaid pleadings. Necessary issues were framed by the trial court. On behalf of the petitioner PW-1 to PW-6 were examined and Ex. PW-1/1, Ex. PW-2/1 to Ex. PW-2/3, Ex. PW-3/1, Ex. PW-3/A, Ex.

PW-5/1, Ex. PW-7/1 to Ex. PW-7/3 were marked on the side of the petitioner. The second respondent examined himself as RW-2/W-1 and his wife as RW-2/W-2 and Exhibits R2W/1, R2W-1/A, R2W1/P-1, R2W2/A were marked. Before the trial was over, the original petitioner passed away. An application under Order 22 Rule 10 CPC was filed by one Sirjan Pal Singh for substituting him in the place of the petitioner, alleging to be the purchaser of the property in question on the basis of a sale deed dated 19.05.2005 executed by the latter in his favour. The trial court *vide* order dated 19.09.2008 dismissed the application. FAO 286/2012 preferred against the order dated 19.09.2008 was allowed by this Court, and by order dated 16.01.2014, Sirjan Pal Singh was substituted in the place of the petitioner.

8. The trial court on consideration of the oral and documentary evidence and after hearing both sides found the will to have been executed by late Sujan Kaur and held the will to be

genuine. However, the application for probate was dismissed holding that the original petitioner after filing the petition for probate sold the property in question to the substituted petitioner and had suppressed and concealed material facts while the matter was pending consideration before the Court. Aggrieved, the second respondent/objector has come up in a appeal.

9. It was submitted by the learned counsel for respondent No.2/objector/the appellant that the impugned judgment is inconsistent as it dismisses the probate petition, yet declares the will to have been proved. A probate judgment is one in *rem*, and therefore a finding regarding the genuineness of a will cannot co-exist with dismissal of the probate petition. It was submitted that the propounder relies solely upon a xerox copy of the will and has failed to satisfy the mandatory requirements of Section 65 of the Evidence Act governing admissibility of secondary evidence. There is no explanation for the non-production of the original will.

No evidence has also been led by the petitioner to substantiate his case of loss/destruction of the will. It was further submitted that the propounder has failed to meet the strict requirements of Section 237 of the ISA which permits probate of a copy or a draft only when the original will is shown to have existed and the same has been lost or destroyed by accident or other unintentional means. Reliance was placed on the dictum in **Ashwini Kumar Agarwal vs. B.K. Mittal 211 (2014) Delhi Law Times 524,** wherein this Court held that probate of a copy cannot be granted unless the conditions contained in Section 237 of the ISA are fulfilled and that Courts are hesitant to grant probate of copies given that revocation of a will can be effected simply by destroying the original of the will.

10. *Per contra*, it was submitted by the learned senior counsel for the petitioner that the second respondent/objector had admitted to the existence of the will executed by his late mother as

he is an attesting witness in a will of the year 2004 executed by his father in favour of his children. In the said will, the wife of the second respondent/objector is also an attesting witness. It was argued that this demonstrated implicit recognition/admission of the will of the year 1996 executed by his late mother. It was further submitted that the case fell within Section 65(c) of the Evidence Act as one of loss and not destruction of the will and therefore secondary evidence was permissible. Exhibit PW-1/1, a copy of the will dated 22.01.1996 executed by late Sujan Kaur has been proved in accordance with law and therefore the trial court was right in holding that the will as genuine and valid. No infirmity has been committed by the trial court calling for interference by this Court, argued the learned senior counsel.

11. Heard both sides.

12. I briefly refer to the evidence adduced by both sides in this case. PW-1 in the affidavit filed in *lieu* of chief examination

has stated that the testatrix is his bhabhi, that is, his brother's wife; that he went to her house on 22.01.1996 on which day she requested him to be an attesting witness to the will by which she intended to bequeath property bearing no.WZ/620 Gali No.19, Shiv Nagar Delhi Road in favour of her husband, Bakshi Prahlad Singh (the original petitioner). He agreed to the request of his bhabhi and he signed the will as an attesting witness. Thereafter, two of her sons, namely, Jasbir Singh and Harminder Singh (respondent no.2/objector) also signed as attesting witnesses. He identified the signature of the attesting witnesses as well as the signature of late Sujan Kaur, the testatrix. The copy of the will was marked as exhibit PW-1/1. PW-1 is also seen to have filed an additional affidavit in *lieu* of chief examination in which he has averred that the testatrix was of sound disposing mind at the time of execution of the will and that the will had been executed voluntarily by the testatrix out of her free will and without any sort

of pressure from any quarter. In the cross examination, PW-1 deposed that he does not know from where and who had got Exhibit PW-1/1 will typed or drafted. He reiterated that at the time of the attestation of the will Ajmer Singh, the brother of the testatrix and her two sons Harminder Singh and Jasbir Singh were also present. He denied the suggestion that he was deposing in favour of the petitioner as the latter had made him a nominee in two post office savings account. He denied the suggestion that Exhibit PW-1/1 was a forged and fabricated document, created after the death of Sujan Kaur by the petitioner in connivance with others.

12.1. The petitioner when examined as PW-2 stands by the case in his petition. He deposed that he had lodged a complaint against his son, the second respondent/objector, as the latter had stolen the original will and that the complaint had been given to Hari Nagar Police Station. He denied the suggestion that he had

misled his son into believing the existence of Exhibit PW-1/1 will and that without showing him the original will had executed another will dated 13.05.2004 in favour of the sons of the second respondent. He also denied that his son Harminder Singh on 13.05.2004 had repeatedly requested him to show the original of Exhibit PW-1/1 will. PW-2 admitted that he had sold the property on 16.05.2005. He admitted that he had opened two postal savings accounts on 21.05.2005 and 25.05.2025, but does not remember whether he had made PW-1 the sole nominee of the said accounts.

12.2. PW-3 record officer of the Sub-Registrar 2 Basai Dharapur, Delhi was examined to prove the registration of will dated 13.05.2004 executed by the petitioner in favour of his grand sons, that is, the sons of the second respondent/objector. The original of the will was produced by him and the copy of the same was marked as Ext. PW3/A.

12.3. PW-4 an official of Hari Nagar Police Station deposed

that the complaint dated 31.01.2005 filed by Bakshi Prahalad Singh (the petitioner) was destroyed in terms of order dated 25.09.2014 of ACP, Head quarters and Exhibit X is the copy of the said order.

12.4. PW-5 Assistant Health Inspector, West Zone, Rajouri Garden, New Delhi was examined to prove Exhibit PW-5/1, the death certificate of Sujan Kaur.

12.5. PW-6 Ahlmad, Court of Metropolitan Magistrate, Tis Hazari Courts, Delhi was unable to produce the records relating to the complaint filed by the petitioner. PW-7 deposed that Complaint case no.186/1/05 was dismissed for default on 10.01.2007 as per Exhibit PW-7/2 order.

12.6 Now coming to the evidence let in by the second respondent/objector, who examined himself as R2W1. He deposed that he is the person in actual possession of the property in question; that on 13.05.2004 his father had convinced him that the

latter had become the owner of the property by virtue of a will left by his mother; that no such will had been shown by his father; that he believed the statement of his father who expressed his intention to execute a will in favour of his children stating that the same was the last wish of his mother; that his father executed the will dated 13.05.2004 in favour of his children; that he and his wife attested the will believing the words of his father; that at the time of the execution of the will he had no reasons to disbelieve his father; that his father secretly cancelled the will dated 13.05.2004 executed in his favour of his children; that he came to know about the cancellation of the will sometime in April 2005; that he realized that his father had fooled him while persuading him to be an attesting witness in the will dated 13.05.2004; that his mother had left no will in respect of the property in question; that he had approached his father to discuss about the cancellation of the will of the year 2004, however his father was adamant and hence he

had to file a suit for partition, that is, Suit no 29/2005, which is pending consideration before the Court. He further deposed that in the suit for partition his father had filed written statement admitting the execution of the will dated 13.05.2004 and that he had sold the property to another person; that the sale by his father is illegal and was done to defeat his legitimate right in the property. The suit for partition filed by him was dismissed by judgment dated 28.09.2007, against which he has preferred regular first appeal 13/2008 which is pending consideration before the court. He further deposed that the substituted petitioner, Sirjan Pal Singh, a relative of one of his neighbours, coming to know that there were disputes between the father and sons, took advantage of the situation, influenced his old and ailing father to execute a sale deed in respect of the property in his favour. His father executed the sale deed dated 16.05.2005 fully knowing that he had no right to do so. However, possession has not been handed to Sirjan Pal

Singh, on the other hand, he continues to be in the possession of the property. He asserted that the will relied on by his father is a forged and fabricated one, created by his father for depriving him of his rightful share in his mother's property. In the cross-examination RW2W1 admitted that he had not lodged any complaint before the police or filed any case before any Court of law regarding his case of forgery by his father. He admitted that he had gone through the draft of the Exhibit PW-3/1 will dated 13.05.2004 executed by his father in favour of his children. He admitted that his wife had also gone through the contents of Exhibit PW-3/1 will before attesting the same. He further admitted his signature in Exhibit PW-3/1. He denied the suggestion that he had removed the original will dated 22.01.1996 from the almirah of his father, against which his father had given a police complaint.

12.7 Amarjeet Kaur, wife of the second respondent/objector, examined as R2W3 supports the case of her husband. In the cross-

examination she admitted her signature in Exhibit PW-3/1 will.

13. In this context it would be apposite to refer to section 237 of the ISA which reads-

> *"Probate of copy or draft of lost will.—When a will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may .be granted of such copy or draft, limited until the original or a properly authenticated copy of it is produced*".

14. It is also necessary to refer to the relevant paragraph in the petition which reads:-

> *"That the original of the said will has been stolen away by S. Harminder singh i.e the son of the testatrix. However, during her lifetime, the testatrix has got the photocopies of the said WILL made and the photocopy appended herewith is the true copy of the original of the said WILL and in the said circumstances the probate is being sought on the said photocopy of the original WILL."*

15. Therefore the specific case of the petitioner is that the original will had been stolen by the second respondent/objector

and not that it was destroyed at any point of time by the testatrix. Here it is also necessary to refer to Section 65 of the Evidence Act which reads-

> *65**. Cases in which secondary evidence relating to documents may be given**.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: —*
>
> *(a) when the original is shown or appears to be in the possession or power — of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;*
>
> *(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;*
>
> *(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;*
>
> *(d) when the original is of such a nature as not to be easily movable;*

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents."

(Emphasis Supplied)

16. Going by the case in the petition, this is a case where Section 65(c) is applicable and not 65 (a) as submitted on behalf of the petitioner.

17. The fact that the original petitioner had moved a complaint against the theft is borne out by the records in the case. It is true that the said complaint was later on dismissed for default. However, one aspect that needs to be noticed is that the petitioner had executed Exhibit PW-3/1 will asserting that he was the owner of the property based on Exhibit PW-1/1 will executed by his late wife, and claiming so, he bequeathed the property in favour of his grand sons, namely, the children of the second respondent/the objector. In Exhibit PW-3/1 will, the second respondent/objector as well as his wife are attesters. This fact is admitted by both the second respondent and his wife. In the replication, the petitioner had also referred to the execution of Exhibit PW-3/1 will in favour of his grandsons. According to him, after Exhibit PW-3/1 will had been executed, the second respondent and his family ill treated and also went to the extent of physically abusing him. This appears to be the reason which prompted him to revoke Exhibit PW-3/1 will.

This conduct of the second respondent in being an attesting witness in Exhibit PW-3/1 will executed by his father substantiates the allegation of execution of Exhibit PW-1/1 will by his late mother in the year 1996. As long as the father had bequeathed the property to his sons, the second respondent/objector seemed to have no complaints against the same. But as soon as his father cancelled Exhibit PW-3/1 will, the second respondent comes with a case of forgery and fabrication of Exhibit PW-1/1 will by his father. The testimony of PW-1, the attesting witness, has not been discredited in any way. No reasons have been shown to disbelieve the testimony of the attesting witness. The second respondent/objector has no case that his mother was not in a sound disposing state of mind when Exhibit PW-1/1 will was executed. PW-1 is admittedly his paternal uncle. The second respondent/objector has no case that PW-1 had deliberately deposed falsehood against him.

18. Admittedly, during the pendency of the proceedings, the property had been sold by the original petitioner the substituted petitioner without informing the court. This prompted the trial court to dismiss the probate petition on the ground that the original petitioner had concealed material facts. This dismissal had not been challenged by the substituted petitioner. Therefore, I find no reasons to interfere with the said finding of the trial court. The materials on record prove the execution of Exhibit PW-1/1 will and therefore I find no infirmity in the impugned order calling for an interference by this court

19. In the result, the appeal *sans* merits is dismissed.

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

CHANDRASEKHARAN SUDHA
(JUDGE)

DECEMBER 10, 2025
MJ/NP