



2026:DHC:9443



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

% Date of Decision: 09.10.2026

CNR No. DLHC010330932008

+ **FAO 97/2008**

HARJINDER SINGH GULIANI Appellant
Through: Ms. Ritu Rana, Advocate

versus

CHARANJIT KAUR & ORS Respondents
Through: Mr. Rakesh Kumar Singh,
Advocate with respondent No.3 in
person

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

CM No. 4007/2008 (for additional docs. by A)

1. By way of the present application, the appellant seeks to place on record certain medical documents, including hospital records to contend that the age of the testator was recorded as 72 years in the hospital medical records, whereas the Will dated 22.04.2003 records his age as 65 years. The appellant also seeks to rely upon a document relating to the donation of blood by him to the testator.
2. *Vide* order dated 11.08.2010, this Court had directed that all the pending applications be heard at the time of final hearing of the appeal. Accordingly, the present application has been taken up.
3. Having considered the submissions and for the reasons stated hereinabove, this Court finds that the appellant has not



furnished a satisfactory explanation for his failure to produce the documents before the Probate Court. The material sought to be introduced was available, or could have been obtained by exercising due diligence, at the stage of the original proceedings. The application does not establish that, despite the exercise of due diligence, the documents could not have been produced before the Probate Court, nor has it been shown that their production at the appellate stage is necessary to enable this Court to pronounce judgment.

4. Accordingly, the application is dismissed.

FAO 97/2008

1. The present appeal has been filed by the appellant under Section 299 of the Indian Succession Act, 1925, (hereinafter referred to as the “Act”) assailing the judgment and order dated 16.11.2007, passed by the learned Additional District Judge, *Delhi* in Probate Case No. 76/2006. By way of the said order, the Probate Court granted letters of administration in favour of respondent No.1/*Smt. Charanjit Kaur* in respect of the Will dated 22.04.2003, stated to be executed by late *Mehtab Singh* (hereinafter referred to as the “Testator”).

2. The appellant, who is the son of the deceased testator disputes the genuineness of the Will dated 22.04.2003 and asserts that the Will dated 11.09.2003, propounded by him, was the last and genuine Will of the testator.

3. The dispute, therefore, concerns two competing Wills attributed to the testator, who died on 03.11.2003. The first Will



2026:DHC:9443



is dated 22.04.2003 and is propounded by his wife, who is respondent No. 1 in the present proceedings. The second Will is dated 11.09.2003 and is relied upon by the appellant.

4. The brief facts necessary for the adjudication of the appeal are that the respondent No.1/wife of the testator instituted the probate proceedings seeking letters of administration in respect of the Will dated 22.04.2003. Under the said Will, the deceased bequeathed Shop No. 23, *Pushpa* Market, *Lajpat Nagar-II*, New Delhi, and property bearing No. B-103, *Dayanand* Colony, *Lajpat Nagar-IV*, New Delhi, in favour of his wife with further arrangements for the devolution of the properties upon their daughters after her death. The appellant, their son, was excluded under the said Will and no share in the properties was bequeathed upon him.

5. A perusal of the record shows that the house at B-103, *Dayanand* Colony, had been allotted to the testator by the Government of India under a lease deed dated 30.09.1966, registered on 26.10.1966. The shop at *Pushpa* Market had been purchased by him under a sale deed dated 13.11.1964, registered on 25.11.1964. The Probate Court treated both properties as the self-acquired properties of the deceased.

6. The appellant contested the probate petition and denied the execution of the Will dated 22.04.2003. His case was that the deceased had executed a subsequent Will dated 11.09.2003, bequeathing Shop No. 23, *Pushpa* Market, in his favour. He also questioned the physical and mental condition of the deceased and



raised several objections concerning the signatures, preparation and attestation of the Will propounded by respondent No. 1.

7. The Probate Court framed the following issues:

“1. Whether the will dated 22.4.2003 propounded by the petitioner or the will dated 11.9.2003 relied upon by the respondent number 5 is the last and genuine will of deceased Mehtab Singh and if so, to what effect? OPP.

2. Relief.”

8. Upon appreciating the evidence led by the parties, the Probate Court accepted the Will dated 22.04.2003 to be the genuine Will of the testator and granted letters of administration in respect thereof. Aggrieved by the said decision, the appellant has approached this Court.

9. The appellant has challenged the impugned order on several grounds. The objections principally concern the alleged dissimilarity in the signatures of the testator appearing on different pages of the Will dated 22.04.2003, the handwritten insertion of the particulars of the attesting witnesses, the overwriting in the date appearing beneath the signature of *Gurcharan Singh*, the alleged inconsistencies in the testimony of the attesting witnesses, the age and medical condition of the deceased and the non-examination of the alleged scribe of the Will. The appellant has also questioned the circumstances in which the Will dated 11.09.2003 was rejected by the learned Probate Court.

10. Learned counsel for the respondent, on the other hand, defended the impugned order and reiterated the submissions



made before the Probate Court. Their case is that the objections raised by the appellant do not establish any circumstance sufficient to displace the findings of the learned Probate Court.

11. Before examining the individual objections, it is necessary to bear in mind the statutory requirements governing the execution and proof of a Will. Section 63 of the Act prescribes the manner in which an unprivileged Will is to be executed. Under clause (c), the Will must be attested by two or more witnesses in the manner provided therein. Section 68 of the Indian Evidence Act, 1872, in turn, requires at least one attesting witness to be called to prove execution where such witness is alive, subject to the process of the Court and capable of giving evidence. Section 68 reads as under:

“68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.”

12. The principles governing proof of a Will were explained by the Supreme Court in “H. Venkatachala Iyengar v. B.N. Thimmajamma”¹. The propounder must establish due execution of the Will and, where legitimate suspicious circumstances arise, must explain them to the satisfaction of the Court. At the same time, every circumstance relied upon by an objector cannot, merely by being questioned, be treated as a suspicious

¹ AIR 1959 SC 443



circumstance. In “*Indu Bala Bose v. Manindra Chandra Bose*”², the Supreme Court explained that a circumstance is suspicious when it is not normal, is not normally expected in the situation, or is not expected of a normal person. The objections must, therefore, be assessed against the evidence as a whole.

13. In the present case, respondent No. 1 examined herself as PW-1 and also produced PW-2/*Gurcharan Singh Guliani* and PW-3/*Jeevan Dass*, who were the attesting witnesses to the Will dated 22.04.2003. Both attesting witnesses deposed that the testator signed the Will in their presence and that they signed it in the presence of the testator and each other. They also testified that the testator was in a sound disposing state of mind at the time of execution.

14. The first objection raised by the appellant concerns the signatures of the deceased on the different pages of the Will. It is contended that the signatures are dissimilar and disclose pen pauses and lifts, suggesting that the document was forged. This objection is required to be considered along with the testimony of the attesting witnesses and the other material on record. The mere assertion that the signatures appear different, without reliable evidence establishing that they were not made by the testator, does not by itself establish forgery. The appellant had also questioned the fact that the names and particulars of the attesting witnesses were written by hand in spaces left blank in the typed Will. The Probate Court noticed this feature but did not consider

² (1982) 1 SCC 20



2026:DHC:9443



it sufficient, in the circumstances of the case, to reject the document. Both attesting witnesses identified their signatures and supported the execution of the Will.

15. Another objection concerns the overwriting in the date appearing beneath the signature of *Gurcharan Singh*. The Probate Court acknowledged the overwriting after perusing the original Will but found it insignificant, noting that the date appearing beneath the testator's signature was also 22.04.2003. On the material presently identified, the appellant has not shown how this overwriting, by itself, disproves the execution of the Will or renders the testimony of both attesting witnesses unreliable.

16. The appellant further contends that there are alleged contradictions in the depositions of PW-2/*Gurcharan Singh Guliani* and PW-3/*Jeevan Dass* concerning the circumstances in which the Will was prepared and the presence of respondent No. 1 and the daughters of the deceased. A difference in the witnesses' recollection of surrounding details does not necessarily contradict their evidence on the essential requirement of execution and attestation. It is also a settled position in law that the mere presence of beneficiaries at the time of the execution of a Will, is not sufficient to doubt its genuineness, unless it is further established that the beneficiaries exercised influence over the testator in making the testamentary disposition. The material question is whether their evidence on the testator's signatures and their own attestation remains credible. The Probate Court considered the testimony of both witnesses and rightly accepted



2026:DHC:9443



their evidence on this aspect.

17. The next objection that PW-3 signed in *Urdu* while giving evidence in Court, whereas his signature on the Will is in English, also does not support the version of the appellant that the Will was not duly attested. The appellant's contention has to be assessed in the context of the evidence actually recorded. In the absence of reliable material establishing that the signature on the Will was not that of PW-3, the contention is meritless especially in view of the fact that the execution stands proved by the attesting witnesses.

18. The non-examination of the person stated to have scribed the Will has also been raised as a ground for drawing an adverse inference against respondent No. 1. However, the execution of a Will is not required to be proved only through its scribe. The statutory requirement is proof in the manner prescribed by law, including the evidence of an attesting witness as required by Section 68 of the Evidence Act. In the present case, both attesting witnesses were examined and deposed to the execution and attestation of the Will. The non-examination of the scribe, by itself, does not negate their evidence.

19. Another contention regarding the variation in the age of the testator has also been raised before this Court. The Will dated 22.04.2003 records the age of the testator as 65 years, whereas the appellant relies upon the medical record of the year 2003 to contend that he was about 72 years of age. More pertinently, this contention was neither raised before the Probate Court nor any



such suggestion was given to any witness. The appellant has also not demonstrated how this discrepancy bears upon the testator's capacity to execute the Will or otherwise affects the evidence regarding its execution.

20. The objection concerning the time at which the Will was produced and the absence of steps for mutation was also considered by the Probate Court. The deceased died on 03.11.2003, while the probate petition was instituted on 09.12.2004. The Probate Court found that the interval did not, in the facts of the case, amount to unexplained delay sufficient to cast doubt upon the Will. No period of limitation for filing a probate petition was identified as having been breached. This Court finds no reason to disagree with the conclusion rendered by the Probate Court on this aspect as well.

21. The appellant also relies upon the fact that the deceased had undergone an operation for a tumour before his death. PW-2 acknowledged that the deceased had undergone such an operation but stated that, at the time of execution of the Will, he was in sound health and in full possession of his senses. The evidence of the attesting witnesses on this aspect was rightly accepted by the Probate Court.

22. The governing principle is that the Court must be satisfied that the Will represents the genuine testamentary disposition of the testator. Similarly, the test stated in "Indu Bala Bose" (*supra*) requires the Court to distinguish between circumstances that are genuinely suspicious and those which are not abnormal in the



2026:DHC:9443



circumstances or do not materially affect the proof of the document. The Will dated 22.04.2003 itself carries the reasons to exclude the appellant from the estate of the deceased testator for neither being faithful nor caring in nature. In fact, a reference was also made to the public notice issued by the testator to debar the appellant. The objections concerning the handwritten particulars, overwriting, absence of notarisation and non-examination of the scribe they do not, in the opinion of this Court, displace the direct evidence of the attesting witnesses.

23. Turning to the Will dated 11.09.2003 propounded by the appellant, the Probate Court examined the evidence of RW-1/*Om Prakash* and RW-3/*Ashok*, who were produced as attesting witnesses to that document. The Court found material reasons to doubt the manner in which the document had been executed and the reliability of the testimony tendered in its support. The Probate Court noticed that the signatures attributed to the witnesses appeared at the extreme left of the paper, rather than at the place ordinarily used for the signatures of attesting witnesses. It also noted the absence of their parentage and address particulars and expressed doubt as to whether the witnesses produced before the Court were the persons who had signed the document. The Probate Court further found the testimony of RW-1 and RW-3 unreliable. Its assessment was not confined to the fact that the witnesses were a bank peon and a three-wheeler driver, rather, the Court considered the placement of their signatures, the absence of identifying particulars and the



2026:DHC:9443



circumstances in which the document appeared to have been prepared.

24. On an independent consideration of the material noticed above, the Probate Court had before it the testimony of both attesting witnesses to the Will dated 22.04.2003. They supported the testator's execution of the document and their own attestation in his presence. The objections raised by the appellant have been considered individually and cumulatively. They do not, on the material presently established, demonstrate that the learned Probate Court's acceptance of the evidence was perverse or that a material circumstance affecting the genuineness of the Will was ignored.

25. Accordingly, in view of the reasons recorded above, the appeal is dismissed and the judgment and order dated 16.11.2007 passed by the learned Additional District Judge is upheld.

26. The appeal stands disposed of accordingly.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 09, 2026

na