



2026:DHC:9394



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

% Reserved on : 21.07.2026
Pronounced on : 15.10.2026
Uploaded on : 17.10.2026

CNR No. DLHC010279262017

+ **FAO 71/2017 & CM APPL. 5420/2017**

AKASH GAHLOT

.....Appellant

Through: Mr. Sachin Puri and Mr. Sanjeev Sagar, Senior Advocates with Mr. Dhananjay Grover, Advocate

versus

STATE AND ORS

.....Respondents

Through: Mr. Karan Veer Tyagi, Mr. Devvrat Tyagi, and Mr. Robin Tyagi, Advocates for LR's of Respondent Nos. 5, 7, and 8.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal filed under Section 299 of the Indian Succession Act, 1925 (hereinafter referred to as the "Act") has been preferred by the appellant, who was the petitioner in Probate Case No. 179/10/03 (renumbered as 15875/16) and had sought grant of probate of the Will purportedly executed by his grandmother, Late *Smt. Shanti Devi*, in his favour.



2026:DHC:9394



2. The appellant assails the judgment and decree dated 08.11.2016 (hereinafter referred to as the “impugned judgment”) passed by the learned Additional District Judge-02 (West), *Tis Hazari Courts, Delhi*, whereby the probate petition filed under Section 276 of the Act was dismissed.

3. The probate petition was filed on behalf of the appellant, who was then a minor, through his father and natural guardian, *Sh. Hargian Singh*, who has been arrayed as respondent no. 4 in the present proceedings, as well as in the proceedings before the Probate Court. It was averred in the subject petition that Late *Smt. Shanti Devi* (hereinafter referred to as the “testatrix”) wife of Late *Sh. Mauji Ram*, passed away on 07.05.2001, leaving behind a Will executed during her lifetime and was registered on 07.10.1999 (hereinafter referred to as the “Will”). The testatrix had eight children, out of whom, two sons, namely *Sh. Rajinder* and *Sh. Ram Kumar*, had predeceased her. They were survived by their respective sons, *Sh. Sudhir Kumar* (respondent no. 2) and *Sh. Gulshan Kumar* (respondent no. 3). The testatrix was survived by her son, *Sh. Hargian Singh* (respondent no. 4), and four daughters, namely *Smt. Rampati* (respondent no. 5), *Smt. Nirmal* (respondent no. 6), *Smt. Raj Bala* (respondent no. 7) and *Smt. Rajpati @ Rajesh Chaudhary* (respondent no. 8).

Sh. Akash Gahlot, son of *Sh. Hargian Singh* and grandson of the testatrix, is the appellant herein, who is the beneficiary and propounder of the Will in question.

4. Notably, the testatrix was the co-owner of a 1/9th share in the agricultural land bearing *Khasra Nos. 90/2(3-19), 91 (6-18), 92(6-18)*,



2026:DHC:9394



93(6-18), 94(7-6), 262(7-6), 571(2-15), 573(1-0), 585(3-10), 584(2-9), 586(4-16), 587(7-4), 588(0-5), 589(2-16), 591(4-16), 594(4-16), 627(4-16), 628(4-13), 623(3-13), 630(4-16), 97/648(0-13), 967/654(0-3), 666/2(0-9), 894(2-8), 896(4-8), situated at *Village Nawada, Mazra Hastasai, Tehsil Mehrauli, New Delhi*.

5. By way of the Will in question, the testatrix bequeathed her entire right/share in movable and immovable properties, as well as her right/share in the compensation payable, including any enhancement thereof, in respect of the land measuring 3.11 *Bighas*, acquired *vide* LAC Award No. 159/86-87, in favour of the appellant, who was the propounder and beneficiary of the Will. The Will was stated to have been executed and registered on 07.10.1999 in the office of the Sub-Registrar.

6. Upon filing of the subject petition, notice was issued to the respondents, and a citation was issued to the general public, inviting objections. Notice was also issued to the concerned Collector/SDM, *Patel Nagar*, to file a valuation report of the property in question. Respondent nos. 2 and 3, namely, *Sh. Sudhir Kumar* and *Sh. Gulshan Kumar*, filed their objections. *Sh. Sudhir Kumar* also filed a separate objection. In the aforesaid objections, the objectors challenged the authority of the testatrix to execute the Will. It was claimed that the same was in contravention of Section 48(2) of the Delhi Land Reforms Act, 1954, as she, being a widow, had no right or title to the property of her late husband, *Sh. Mauji Ram*. It was also claimed that Section 50 of the Delhi Land Reforms Act provides that the general order of succession favours male lineal descendants and, as such, the testatrix,



2026:DHC:9394



being the widow, and the five daughters, could not have succeeded to the *Bhumidhari* holdings of Late *Sh. Mauji Ram*.

7. The objectors also challenged the mutation dated 21.07.1965 passed by the *Tehsildar*, whereby the *Bhumidhari* holding of Late *Mauji Ram* was mutated in the name of his wife (the testatrix) and her five daughters. The objectors, along with respondent no. 4, the father of the beneficiary, namely *Sh. Hargian Singh*, had challenged the said mutation by way of a civil suit, which was pending consideration at the time the objections were filed.

8. It was further pleaded that a family settlement between *Sh. Hargian Singh* and the objectors had been reached, under which certain land holdings had fallen to the share of the objectors, in respect whereof they had paid a sum of Rs.99,000/- to *Sh. Hargian Singh*.

9. Additionally, *Smt. Rampati*, *Smt. Nirmal*, *Smt. Raj Bala*, and *Smt. Rajpati @ Rajesh Chaudhary* (respondent nos. 5, 6, 7, and 8 respectively) also filed joint objections and claimed that the alleged Will was forged and fabricated, as the testatrix had died intestate. In the alternative, it was claimed that the appellant had procured the alleged Will by fraud, coercion, and importunity. It was alleged that the testatrix had met with a road accident about 13 years earlier, as a result of which steel rods were inserted in her legs and she used to walk with the help of a walker. It was further alleged that, about two years before her death, she had suffered a fracture, following which she was confined to bed and her movements were restricted. It was also claimed that the appellant had not produced any certificate from a



2026:DHC:9394



doctor certifying that the testatrix was of sound disposing mind at the time of execution of the alleged Will.

10. The Will was also challenged as unnatural on the ground that it excluded all the other legal heirs. It was further stated that *Sh. Sudhir* and *Sh. Gulshan*, the objectors, along with *Sh. Hargian Singh*, had also filed Suit No. 811/2002 challenging the title of the daughters. The said suit was dismissed, and an appeal bearing **RCA No. 29/2005** was pending. Besides, the objectors *Sh. Sudhir* and *Sh. Gulshan*, along with *Sh. Hargian Singh*, had also filed a civil suit seeking a direction restraining the release of the testatrix's share of compensation under the Land Acquisition Award in favour of the daughters. The said suit was also dismissed.

11. On the basis of the pleadings, the Probate Court framed the following issues:

- “1. *Whether the Will dated 07.10.1999 executed by late Smt. Shanti was her last testament, executed genuinely and validly while she was in a sound disposing state of mind? OPP*
2. *Whether the petitioner is entitled to the grant of probate as prayed for? OPP*
3. *Relief.”*

12. During the course of the probate proceedings, in order to prove the due execution and registration of the Will, the appellant examined the attesting witness, namely, *Sh. J. B. Malik*, Advocate, as PW-3. Besides examining the attesting witness, the appellant also summoned and examined a bank witness, namely *Sh. Akhileshwar Sahay* (PW-1), Manager, *Allahabad Bank*; *Sh. Krishan Kumar* (PW-2), LDC from the office of Sub-Registrar-II, *Janakpuri, Delhi*; and *Sh. P. K. Dabas*, Value Added Tax Officer from the VAT Department (PW-3A). *Smt.*



2026:DHC:9394



Alka Gahlot, the mother and attorney of the then-minor appellant, was examined as PW-4.

13. On behalf of the respondents, objector *Sh. Sudhir Kumar* was examined as R2W1, *Sh. Gulshan Kumar* was examined as RW-3, and respondent no. 8/*Smt. Rajpati @ Rajesh Chaudhary* was examined as R8W1.

14. The Probate Court, while dismissing the subject petition, primarily found the Will to have been executed in suspicious circumstances. In this regard, it noted that while the Will was claimed to have been executed and registered on 07.10.1999, on page 2 of the Will the date '15.09.1999' appeared which the attesting witness could not satisfactorily explain. The Probate Court also found it highly improbable and unnatural that the testatrix would have approached *Sh. J. B. Malik*, as there was no prior relationship between the two.

15. Further, the testimony of *Sh. P. K. Dabas*, the then Sub-Registrar, was also doubted on the ground that he had been examined 12 years after the registration of the Will. It was also observed that, in his testimony, the attesting witness, *Sh. J. B. Malik*, had mentioned the presence of another person, aged about 35-40 years, at the time of execution of the Will.

16. Lastly, the fact that the original Will was filed after seven years was also considered as a suspicious circumstance. The Probate Court observed that the beneficiary and propounder of the Will, though a minor at the time of filing the petition, had attained the age of majority during the pendency of the petition but chose not to enter the witness box. It was further observed that the father of the appellant had been



2026:DHC:9394



impleaded as a respondent and that only his mother, *Smt. Alka Gahlot*, had been examined as PW-4. In the opinion of the Probate Court, this was also a suspicious circumstance, as the objectors were deprived of the opportunity to cross-examine the appellant and propounder of the Will.

17. Before this Court, learned Senior Counsel appearing for the appellant contended that the suspicious circumstances which were taken into account by the Probate Court were not even pleaded by the objectors in their reply. It was submitted that, unless such circumstances were pleaded, the propounder would have no opportunity to address them or lead evidence to dispel them. Learned Senior Counsel submitted that the objections filed by *Sh. Sudhir Kumar* and *Sh. Gulshan Kumar* primarily questioned the authority and capacity of the testatrix to make a bequest. The other objectors had alleged that the testatrix had died intestate and the Will sought to be propounded was forged and fabricated. The only circumstance concerning the testatrix's health raised in the objections was that she had suffered a road accident about 13 years earlier and a fracture about 2 years before her death, however, no medical documents in support of these allegations had been produced.

18. In support of the contention that a challenger to a Will must specifically plead the grounds of challenge, learned Senior Counsel relied upon the decision of this Court in *Budh Singh v. Raghubir Singh*¹. The said decision was relied upon for the proposition that the

¹ 2015 SCC OnLine Del 14528



2026:DHC:9394



propounder must be made aware, through the pleadings, of the grounds on which the Will is challenged so as to have an opportunity to lead evidence to meet them, and that a challenger cannot raise new grounds for the first time at the stage of arguments.

19. On behalf of appellant, reliance was also placed upon the decision of the Supreme Court in P. P. K. Gopalan Nambiar v. P. P. K. Balakrishnan Nambiar² in support of the contention that although the propounder is required to prove the Will and dispel suspicious circumstances, such circumstances must be real, germane and valid, and not merely the product of a doubting mind. It was further contended that the Probate Court had erred in observing that both attesting witnesses were advocates, as only *Sh. J. B. Malik* was an advocate, whereas the record did not support the observation that the second attesting witness, *Sh. Rakesh Kapila*, was also an advocate.

20. Learned counsel appearing for the LRs of respondent nos. 5, 7, and 8, on the other hand, defended the impugned decision. It was submitted that the testatrix was an illiterate lady and that, although the Will bore her signature, it did not record that its contents had been explained to her in vernacular. Learned counsel further submitted that the suspicious circumstances had emerged during cross-examination and that the Probate Court was, therefore, justified in considering them while dismissing the subject petition.

21. This Court has heard the arguments advanced on behalf of the parties as well as perused the evidence placed on record.

² 1995 Supp. (2) SCC 664



2026:DHC:9394



22. A Will occupies a distinct position in the law of succession. Unlike an ordinary document, it speaks from the death of its maker, who is no longer available to affirm or explain the circumstances in which it came to be executed. The Court is, therefore, required to approach the question of its proof with due care and circumspection, bearing in mind that the document propounded must represent the genuine and conscious testamentary disposition of the testator. At the same time, the solemn nature of a testamentary disposition does not warrant the rejection of a Will on the basis of conjectures or doubts which are not borne out by the evidence. The task of the Court is to examine the evidence as a whole and determine whether the Will was duly executed and whether any legitimate suspicious circumstances surrounding its execution have been satisfactorily explained.

23. It is well settled that a Will is a testamentary document that comes into operation after the death of the testator. Section 59 of the Act stipulates that every person of sound mind, not being a minor, may dispose of property by Will. Section 61 provides that a Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

24. Section 63 of Act further lays down the requirements for the execution of unprivileged Wills and reads as under:

“63. Execution of unprivileged wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules:—



(a) *The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.*

(b) *The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.*

(c) *The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”*

A plain reading of Section 63 shows that a Will must be attested by two or more witnesses.

25. Further, under Section 68 of the Indian Evidence Act, 1872, a document required by law to be attested cannot be used in evidence unless at least one attesting witness, if alive and capable of giving evidence, is called to prove its execution. The relevant portion of 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.”*

26. Now that the statutory requirements governing the execution and proof of a Will have been noticed hereinabove, it would be apposite to advert to the principles laid down by the Supreme Court in this regard. In H. Venkatachala Iyengar v. B.N. Thimmajamma³, the

³ AIR 1959 SC 443



2026:DHC:9394



three-Judge Bench of the Supreme Court considered in detail the principles governing the execution and proof of Wills and laid down the following guiding principles:

“18. What is the true legal position in the matter of proof of wills? It is well known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. S. 67 and 68, Evidence Act are relevant for this purpose. Under S. 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Ss. 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a Court of law. Similarly, Ss. 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. 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. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by S. 63 of the Indian



2026:DHC:9394



Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of



2026:DHC:9394



undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English Courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical Courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word 'conscience' in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the Court is the last will of the testator, the Court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

*22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the Court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parc in *Harmes v. Hinkson*, 50 Cal W N 895 : (AIR 1946 PC 156), "where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not*



demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth". It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect."

27. The Supreme Court has further clarified that every circumstance cannot be characterized as suspicious. It becomes suspicious only when it is not normal or is not normally expected in a normal situation or is not expected of a normal person. In this regard, a gainful reference may be made to the decision in Indu Bala Bose v. Manindra Chandra Bose⁴, wherein the Apex Court held as under:

"7. This Court has held that the mode of proving a Will does not ordinarily differ from that of proving any other document except to the special requirement of attestation prescribed in the case of a Will by Section 63 of the Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the Will as genuine. Even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances, or there might be other indications in the Will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes a prominent part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the

⁴ (1982) 1 SCC 20



Will might be unnatural and might cut off wholly or in part near relations.

8. Needless to say that any and every circumstance is not a “suspicious” circumstance. A circumstance would be “suspicious” when it is not normal or is not normally expected in a normal situation or is not expected of a normal person.”

(emphasis supplied)

28. More recently, in Shivakumar & Ors. v. Sharanabasppa & Ors.⁵, the Supreme Court, after traversing through the relevant decisions, has summarised the legal principles governing the adjudicatory process concerning proof of a Will as follows:

“12.1. Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.

12.2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

12.3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.

12.4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

⁵ (2021) 11 SCC 277



12.5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

12.6. A circumstance is “suspicious” when it is not normal or is ‘not normally expected in a normal situation or is not expected of a normal person’. As put by this Court, the suspicious features must be ‘real, germane and valid’ and not merely the ‘fantasy of the doubting mind.’

12.7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?

12.9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.”

29. The principles noticed hereinabove are to be applied to the



2026:DHC:9394



evidence led in the present case. The Probate Court declined to accept the Will dated 07.10.1999 principally on account of certain circumstances which, in its view, cast doubt on its execution. The appellant submits that the circumstances so relied upon were either not pleaded by the objectors or, in any event, stood explained by the evidence on record. The rival submissions must be considered against the settled position that while the propounder bears the burden of proving due execution, suspicion must be founded on circumstances that are real and germane to the question of whether the instrument represents the free and conscious testamentary disposition of the testatrix.

30. At the outset, it is necessary to distinguish the objection concerning the testatrix's authority to bequeath the agricultural land from the objections directed at the genuineness of the Will itself. Respondent nos. 2 and 3 questioned the devolution of *Bhumidhari* rights under the Delhi Land Reforms Act, 1954, and relied upon the pending dispute concerning mutation and title. The scope of probate proceedings, however, is confined to determining whether the Will propounded is genuine and duly executed and they do not constitute proceedings for adjudication of title to the property purportedly bequeathed. The question of title must, therefore, be left open to be agitated in the appropriate proceedings (Ref: Chiranjilal Shrilal Goenka v. Jasjit Singh⁶).

31. As regards the challenge to the genuineness of the Will, the

⁶ (1993) 2 SCC 507



2026:DHC:9394



evidence of *Sh. J. B. Malik*, Advocate, one of the attesting witnesses, assumes significance. He deposed that the Will was prepared on the instructions of the testatrix, typed in English, and its contents were explained to her in *Hindi*. According to him, the testatrix signed and affixed her thumb impression in the presence of both attesting witnesses and *Sh. Rakesh Kapila* signed thereafter, followed by *Sh. J. B. Malik* himself. He further stated that the testatrix's identity was checked through her ration card and that, when the Will was presented before the Sub-Registrar, the parties again signed and affixed their impressions on the reverse of the first page. He identified the marks appearing at points 'C', 'D', 'E', and 'F' as those of the testatrix and the marks at appearing at points 'G' and 'H' as those of the other attesting witness. He also stated that the testatrix's photograph was affixed to the Will.

32. *Sh. J. B. Malik*, in his cross-examination, maintained his stand that that the Will was executed and registered on 07.10.1999, explaining that the date '15.09.1999' appearing on the second page could be a typing mistake. He denied the suggestions that the testatrix had not signed the Will in his presence, that she had not appeared before the Sub-Registrar, or that the signatures and thumb impressions appearing at different points were those of different persons. His evidence, therefore, directly addresses the statutory requirements of execution and attestation and cannot be displaced merely by pointing to a discrepancy in the date appearing on one page. On being cross-examined on behalf of respondent no. 8, the witness categorically denied the suggestion that the Will was forged or fabricated or was



2026:DHC:9394



prepared at the instance of *Sh. Hargian Singh*. A suggestion was also put to *Sh. Malik* with respect to the testatrix having met with an accident, the same was, however, denied for want of knowledge.

33. The testimony of *Sh. P. K. Dabas*, who was the Sub-Registrar at the relevant time, further provides corroboration on the factum of presentation and registration. He deposed that the Will, which was exhibited as Ex. PW-1/D-2, was presented and registered, during his tenure as Sub-Registrar, on 07.10.1999. He denied the suggestions that the signatures of the testatrix appeared differently on the Will. He clarified that the signatures of the executant of a document are obtained on the original Will and on the copy simultaneously. He further denied the suggestion that the thumb impression and signature of the testatrix were different on the original Will and in the records maintained at the office of Sub-Registrar, or that the testatrix had never appeared before him or had been impersonated. He also denied the suggestion that the Will had been prepared at the house of the person who presented it for registration. The fact that *Sh. Dabas* was examined years after the registration was a matter to be considered while assessing his recollection, since the passage of time, without more, does not render his testimony unreliable, particularly when his evidence concerns the official act of registration.

34. The discrepancy between the date appearing on the second page of the Will and the date of its registration was treated by the Probate Court as a suspicious circumstance. *Sh. Malik*, however, specifically stated that the Will was executed and registered on 07.10.1999 and that the earlier date could be a typing mistake. This explanation has to



2026:DHC:9394



be assessed with the evidence of the Sub-Registrar and the remaining evidence, rather than by treating the date on the second page in isolation as proof of fabrication. No material referred to in the impugned judgment establishes that the Will was in fact executed on 15.09.1999 or that the discrepancy affected the acts of execution and attestation deposited by *Sh. Malik*.

35. The Probate Court also considered it improbable that the testatrix would have approached *Sh. Malik* when no prior personal relationship between them had been established. In this regard, *Smt. Alka Gahlot*, the mother and attorney of the appellant, deposed that though she had heard of *Sh. Malik*, she did not know him personally. She also stated that she had known *Sh. Rakesh Kapila* since 7-8 years prior to the testatrix's death. She further deposed that the testatrix had shown the Will to all the family members after its execution and that, following her death, it was found in her almirah. A suggestion was also put to her that both *Sh. Malik*, Advocate and *Sh. Kapila* were friends of her husband, which she denied for want of knowledge. She also denied the suggestion that her husband, in collusion with the two attesting witnesses, had forged and fabricated the Will. She also denied the suggestion that the testatrix was not in good physical condition or in a position to hear, see, or understand anything. She also denied the suggestion that the testatrix was not of sound disposing mind at the time of the execution of the Will.

36. Another circumstance noticed by the Probate Court was the presence of a person aged about 35 to 40 years who had accompanied the testatrix. *Sh. Malik* stated that he did not remember whether *Sh.*



Hargian Singh was present and could not recall whether the accompanying person had disclosed his relationship with the testatrix. He rather categorically denied that the Will had been drafted at the instructions of *Sh. Hargian Singh*. Thus, the witness did not identify the accompanying person as *Sh. Hargian Singh*. Even if *Sh. Hargian Singh*'s presence at the time of execution is assumed, such presence, without evidence that he procured or dictated the Will or exercised any influence over the testatrix, would not by itself establish that the testamentary disposition was not her own. In this regard, reference may be made to the decision of the Supreme Court in *Sridevi v. Jayaraja Shetty*⁷, wherein it was held that mere presence at the place of execution does not, by itself, establish that the person had taken a prominent part in the execution of the Will.

37. The objectors also questioned the testatrix's physical and mental condition, alleging that she had suffered an accident, required a walker to walk, and was confined to bed following a fracture. *Sh. Malik* denied the suggestion that the testatrix was not of sound disposing mind, while *Smt. Alka Gahlot* denied that the testatrix was unable to see, hear, or understand the contents of the Will or that her thumb impressions had been obtained at home while she was bedridden. The allegations concerning her health were not supported by medical evidence establishing incapacity at the time of execution. Physical infirmity, even if present, is not synonymous with absence of testamentary capacity. The test under Section 59 of the Act is whether,

⁷ (2005) 2 SCC 784



2026:DHC:9394



at the relevant time, the testatrix understood the nature of the act and the effect of the disposition. On the evidence identified in the impugned judgment, the allegations of incapacity do not independently establish that she lacked such understanding.

38. The fact that the Will excludes the other legal heirs was also relied upon as a circumstance against its genuineness. In Uma Devi Nambiar v. T.C. Sidhan⁸, the Supreme Court, while referring to the Constitution Bench decision in Shashi Kumar Banerjee v. Subodh Kumar Banerjee⁹, reiterated the principles governing proof of a Will and explained that exclusion of natural heirs, by itself, does not constitute a suspicious circumstance. The relevant extract is reproduced below:

“5. The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a Will by Section 63 of the Indian Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the Will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the Will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will

⁸ (2004) 2 SCC 321

⁹ AIR 1964 SC 529



2026:DHC:9394



of the testator. If the propounder himself takes part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations.”

39. The above principle is material here. A Will is intended to alter the ordinary course of succession and consequently, exclusion of some or all natural heirs cannot, without more, lead to a conclusion that the Will is unnatural or fabricated. The bequest in favour of the appellant, who was the testatrix's grandson, therefore required scrutiny in the context of the evidence as a whole, but the mere fact that other heirs were excluded does not supply the missing proof of fraud, coercion or undue influence.

40. The Probate Court also attached significance to the non-examination of the appellant and his father, *Sh. Hargian Singh*. It is an admitted position as per the facts of the case that the appellant was a minor when the probate petition was instituted and was not stated to have been present at the time of execution. His mother, *Sh. Alka Gahlot*, was examined as PW-4. In these circumstances, the appellant's non-examination could not, by itself, be treated as proof that the Will was not genuine. The father's non-examination may be considered in evaluating the overall evidence, particularly in view of the allegation of his involvement, but it does not relieve the Court of assessing the direct evidence of the attesting witness and the evidence concerning registration. A gainful reference in this regard may be made to the decision passed by the Coordinate Bench of this Court in



Narender Nath Nanda v. State¹⁰, wherein it was held as under:

“9. It is only when the propounder of the Will has proved the execution of a Will in accordance with law, which includes proof of attestation, would the Court be required to examine, if at all, the alleged suspicious circumstances put forth by the objectors. As is obvious if, the propounder fails to prove the execution of the Will in accordance with law, then the Court would not have to necessarily proceed to the next step in the enquiry, which is, examination of the suspicious circumstances. As regards suspicious circumstances there may arise myriad situations impugning the genuineness of the Will, such as: where, the signatures of the testator are in doubt; the condition of the testator's mind is Unsound either for the reasons of insanity, intoxication or even illness; the dispositions of property made, are unnatural, improbable, or unfair when, seen in the light of relevant facts and circumstances, or that there are indications that the testator's mind was not free. However, merely because a Will bequeaths the property of the testator to persons outside the immediate family, or excludes one or the other members of the family would not by itself put it in the category of a suspicious circumstance; as a Will by its very nature is a document which breaks the normal line of succession. Once suspicious circumstances are present, the onus is on the propounder of the Will to remove the doubts so created, on account of suspicious circumstances, and if that is done, the Court will have to give effect to the Will even if the dispositions of property provided therein exclude one or all family members or near relations of the testator. [See Pushpawati v. Chandraraja Kadamba, (1973) 3 SCC 291]

9.1. If, there is any doubt as to the execution of the Will, the Court should examine the Explanations offered by the propounder of the Will, by applying the test of a “prudent mind”. By that the Courts have meant that the requirement is not that the propounder of the Will is called upon to adduce “mathematical proof. The propounder must, “remove the suspicion, if any, attaching to the execution of the Will and if there be any doubt regarding the due execution, he must satisfy the conscience of the Court that the testator had a sound and disposing state of mind and memory when he made the Will”. “Reasonable scepticism, not an obdurate persistence in disbelief nor a resolute and impenetrable incredulity is demanded of the testamentary judge. He is never required to close his mind to the truth.” [See Seth Beni Chand v. Smt Kamla Kunwar, (1976) 4 SCC 554]”

(emphasis supplied)

¹⁰ 2010 SCC OnLine Del 2257



2026:DHC:9394



41. The delayed production of the original Will was another circumstance relied upon by the Probate Court. The record reflects that an application under Section 151 CPC was moved on 26.03.2010 for placing the original Will on record, the petition having earlier been accompanied by a photocopy as the original was stated to be unavailable. The explanation was that the original had subsequently been traced. The absence of particulars as to when and where the original was lost and found was a matter requiring consideration, however, the record also reflects that the original was compared with the photocopy already on file and was found to be the same, and that the application was allowed before evidence commenced. The delay, therefore, had to be weighed with these circumstances and could not, without further material indicating substitution or fabrication, be treated as conclusive proof against the Will.

42. The circumstances noticed hereinabove must ultimately be assessed in the light of the evidence as a whole and the settled principles governing proof of a Will. There is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. (Ref: Prem Singh v. Birbal¹¹). Likewise, in Dhanpat v. Sheo Ram¹², the Supreme Court reiterated the principles governing proof of a Will and the necessity of establishing due execution and attestation in

¹¹ (2006) 5 SCC 353

¹² (2020) 16 SCC 209



accordance with the statutory requirements.

43. Applying the aforesaid principles to the present case, *Sh. J. B. Malik* (PW-3), the attesting witness, gave a direct account of the execution of the Will, stating that it was prepared on the instructions of the testatrix, that its contents were explained to her in *Hindi*, and that she signed and affixed her thumb impression in the presence of the attesting witnesses. He further deposed regarding the subsequent presentation of the document for registration. His testimony, in this regard, is supported by the evidence of *Sh. P. K. Dabas*, who confirmed that the Will was presented and registered on 07.10.1999. As regards the discrepancy in the date appearing on the second page, *Sh. Malik* attributed the same to a possible typing error. This explanation has to be considered alongside the evidence concerning execution and registration, and not in isolation.

44. The respondents have also relied upon *Kavita Kanwar v. Pamela Mehta*¹³ in support of their challenge to the Will. The Supreme Court emphasised that the nature of each circumstance alleged to be suspicious, as well as its cumulative effect, must be considered while determining whether the Will represents the free and conscious disposition of the testatrix. The said principle requires the Court to examine the circumstances surrounding the execution of the Will as a whole, without allowing suspicion unsupported by the evidence to take the place of proof.

45. Applying this principle to the present case, the discrepancy in

¹³ (2021) 11 SCC 209



2026:DHC:9394



the date appearing on the second page has been addressed by the attesting witness, the evidence of the Sub-Registrar supports the factum of presentation and registration, and the presence of an unidentified person does not, in itself, establish that the Will was procured or dictated by *Sh. Hargian Singh*. Also, the allegations concerning the physical and mental condition of the testatrix are not supported by medical evidence establishing incapacity at the time of execution. The exclusion of the other legal heirs and the non-examination of the appellant and his father have also been considered in the context of the evidence already discussed.

46. Upon a cumulative assessment of these circumstances, this Court finds that they do not outweigh the direct testimony of the attesting witness establishing execution and attestation, read with the evidence concerning registration. The evidence, considered in its entirety, satisfies this Court that the Will has been duly proved in accordance with law.

47. Before parting, it is necessary to clarify that the present adjudication remained confined to the question of proof of the Will and does not extend to the determination of title to the properties purportedly bequeathed thereunder. As noticed hereinabove, the objections concerning the devolution of the agricultural land and the rights of the parties thereto remain open for consideration in the appropriate proceedings. For the reasons recorded above, this Court finds that the circumstances relied upon by the Probate Court do not furnish sufficient ground to reject the Will, particularly in view of the evidence establishing its due execution and attestation.



2026:DHC:9394



48. In view of the above, the present appeal is allowed and the impugned judgment is set aside.

49. The appellant shall furnish an Administrative Bond with one surety to the satisfaction of the Registrar General of this Court. Subject to the appellant filing the requisite Court fees and complying with the aforesaid formalities, let probate/letters of administration be issued in favour of the appellant in respect of the Will dated 07.10.1999 executed by Late *Smt. Shanti Devi*.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 15, 2026

na