



2026:DHC:8047



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

% Reserved on : 23.07.2026
Pronounced on : 18.09.2026
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+ **FAO 148/2009 and CM APPL. 6208/2009**

ANIL PRASHARAppellant

Through: Mr. M.K. Sharma, Mr. Abhinav,
Mr. Dronh Bhardwaj, Ms.
Anjali, Mr. Aishwarya, and Mr.
Sunil, Advocates

versus

STATE & ORS.Respondent

Through: Mr. Prashant Mehra, Advocate
for Respondent Nos. 2 and 3

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted under Section 299 of the Indian Succession Act, 1925 (hereinafter the “Succession Act”) by the objector/appellant assailing the judgment dated 02.09.2008 passed in Probate Case No. 71/2006 (Old Case No. 342/2004).

Vide the impugned judgment, the learned ADJ allowed the petition filed by the propounders/present respondent nos. 2 & 3 under Section 276 of the Succession Act seeking grant of probate in respect of a Will dated 09.11.1984 executed by late *Sh. Manohar Lal Sharma* (hereinafter the “testator”).



2. Briefly stated, the testator, who passed away on 20.12.1984, was the absolute owner of a property measuring 280 sq. yards and bearing no. *CB-17, Hari Nagar, Clock Tower, New Delhi – 110064*. He was survived by five legal heirs, namely, his widow *Smt. Kamla Devi*; three sons, namely, *Sh. Satish Kumar Sharma*, *Sh. Anoop Kumar Sharma*, and *Sh. Anil Kumar Parashar*; and a daughter, *Smt. Pushplata Sharma*. The widow, *Smt. Kamla Devi*, subsequently expired on 29.02.2004.

3. Present respondent nos. 2 & 3, namely, *Sh. Satish Kumar Sharma* and *Sh. Anoop Kumar Sharma*, preferred the underlying petition seeking probate of the last Will and Testament dated 09.11.1984 of their late father. Under the said Will, the testator bequeathed certain portions of the aforementioned property to his 3 sons. Specifically, the ground floor portion marked green in the plan attached to the Will was bequeathed to *Sh. Satish Kumar Sharma* for life and thereafter to his children; the first floor was bequeathed to *Sh. Anoop Kumar Sharma* for life and thereafter to his children; and a 50 sq. yard portion on the ground floor marked brown in the attached plan was bequeathed to *Sh. Anil Kumar Parashar* with liberty to raise construction up to any height. All three sons were also appointed as executors of the Will.

4. The underlying probate petition was contested solely by the present appellant, *Sh. Anil Kumar Parashar*, who denied execution of the Will, asserted that the testator had died intestate, alleged that the signatures of the testator and the attesting witness *Smt. Kamla Devi* were forged, and contended that the testator was neither mentally



sound nor physically fit at the relevant time. Notably, the testator's daughter, *Smt. Pushplata Sharma*, furnished a No Objection Certificate and did not contest the petition.

5. During probate proceedings, the propounders had examined three witnesses, including PW-1/*Sh. Jagdish Lal*, UDC from the House Tax Department, MCD; PW-2/*Sh. Satish Kumar Sharma* himself; and PW-3/*Capt. Uma Rani Kaushik*, the surviving attesting witness who was posted as a military nurse at the *Army Hospital, Delhi Cantt.*, where the testator was admitted at the time of execution of the Will.

The present appellant, *Sh. Anil Kumar Parashar*, examined himself as RW-1.

6. *Vide* the impugned judgment, the Probate Court held that the petitioners had successfully proved the due execution of the Will, established that the testator was of sound disposing mind and repelled the objections raised by the appellant.

7. Before this Court, learned counsel for the appellant, while assailing the impugned judgment, contends that the unregistered Will dated 09.11.1984 is a false and fabricated document. He contends that the underlying probate petition was filed after an inordinate delay of about 20 years, which casts suspicion over the genuineness of the Will. It is contended that the signatures of the testator and *Smt. Kamla Devi* were forged, that the testator was suffering from asthmatic ailments and was not of sound disposing mind at the relevant time as evidenced *inter alia* by no medical fitness certificate being obtained, that the execution did not comply with Section 63 of the Succession Act, and



that the manner in which the property was distributed under the Will was disproportionate and therefore suspicious, particularly in view of the exclusion of the mother and daughter from any bequest. It is further contended that the explanation furnished by the contesting respondents for the delay, namely, that all the children of the testator had unanimously agreed not to seek probate of the Will during the lifetime of their mother, as the sons might not look after her after obtaining probate, is untenable, particularly as the mother herself was aware of the Will and its contents, having been one of its two attesting witnesses. Learned counsel also argued that the third paragraph of the Will, setting out detailed architectural measurements, is a suspicious circumstance given that the testator was hospitalized at the relevant time. Learned counsel further placed reliance upon Renu Jain & Ors. Vs. Kamla Vati Jain & Ors.¹ in support of the challenge to the manner of execution of the Will.

With reference to the captioned application filed on behalf of the appellant for producing additional evidence, it is further contended that the Probate Court gravely erred by closing the appellant's evidence and denying him the opportunity to examine a handwriting expert by summoning old pension records from the *Delhi Fire Service, MCD*, and obtaining the original sale deed dated 03.12.1964 and the relevant bank records of *Smt. Kamla Devi* from *State Bank of India, Hari Nagar Branch*.

8. *Per contra*, learned counsel for respondent nos. 2 & 3 supports

¹ 2019:DHC:2574



the impugned judgment, submitting that the Will dated 09.11.1984 is a genuine document duly proved through the testimony of the surviving attesting witness, Capt. *Uma Rani*/PW-3. It is submitted that the delay in filing the probate petition was fully explained by the fact that the testator's widow, *Smt. Kamla Devi*, was alive until 29.02.2004, and out of reverence and a family consensus not to disturb her or compel probate during her lifetime, filing of the petition was deferred, especially since all brothers were already in peaceful possession of their respective demarcated portions in terms of the Will. It is further submitted that the appellant had himself admitted the existence and validity of the Will in contemporaneous mutation proceedings before the MCD in August 2003, as well as in a family settlement, thereby rendering his subsequent contradictory stances completely untenable.

With regard to the application for producing additional evidence, learned counsel submits that the appellant had been afforded repeated opportunities by the Probate Court to produce the material sought to be relied upon, but failed to take the requisite steps, and that the application was ultimately rejected *vide* order dated 04.08.2008, which was never challenged.

9. I have heard the learned counsels for the parties and carefully examined the record.

10. Learned counsel for the appellant has contended that the requirements of Section 63 of the Succession Act were not satisfied since the surviving attesting witness/PW-3 deposed that it was the advocate, and not the testator, who asked her to sign the Will.



11. The record shows that, at the relevant time, the testator was admitted to the officers' medical ward of the *Army Hospital, Delhi Cantt.* and that PW-3/Capt. *Uma Rani* was on duty in the said ward. She has deposed as PW-3 that an advocate had prepared the Will and read it over to the testator in the presence of PW-3. According to her, the testator then signed the Will, followed by *Smt. Kamla Devi*, and then by PW-3 herself. She has identified the signatures of all three on the Will.

Significantly, the Will was also attested by Notary Public *Sh. H. R. Mahindra*, who had been brought to the hospital for the said purpose.

12. A perusal of Section 63(c) of the Succession Act reveals that each attesting witness is required to sign the Will in the presence of the testator. PW-3's testimony establishes that the testator first signed the Will in her presence, followed by *Smt. Kamla Devi* and the witness signing it thereafter. Learned counsel for the appellant has placed reliance on *Renu Jain (supra)* but the said decision does not come to the appellant's aid in the present facts. In the said case, the attesting witness had not seen the testator sign the Will in his presence, nor had he seen the other attesting witness append his signatures thereto. On the other hand, in the present case, as noted above, PW-3 has categorically deposed that the testator first signed the Will in her presence, followed by *Smt. Kamla Devi* and thereafter by PW-3 herself. The fact that PW-3 stated that she was asked to sign the Will by the advocate, rather than by the testator, does not take away from



the fact that she signed the Will in the presence of the testator. Accordingly, PW-3, being the surviving attesting witness, was competent to prove the execution of the Will in terms of Section 68 of the Evidence Act.

13. Another challenge sought to be raised by the appellant is centred on alleged suspicious circumstances, most significantly the delay between the execution of the Will in 1984 and the filing of the underlying probate petition.

14. It has come on record that the testator's widow, *Smt. Kamla Devi*, survived until 29.02.2004. Since the Will did not allocate a specific share to her, the family unanimously agreed that no formal probate proceedings would be initiated during her lifetime so as not to cause her any anxiety or insecurity regarding her residence. It is material to note that the respondents have never contended, either before the Probate Court or before this Court, that *Smt. Kamla Devi* was unaware of the Will. Their case has consistently been that, despite her being aware of the Will and having attested it, the family had agreed not to initiate formal probate proceedings during her lifetime. Crucially, all three brothers had already taken exclusive possession of their respective demarcated portions of the property concerned, in conformity with bequests made under the Will during the testator's lifetime and thereafter. The fact that the Will did not make a bequest in favour of the testator's widow or daughter, in the facts of the present case, does not by itself render the distribution under the Will suspicious. Moreover, it is well-settled that there is no fixed period of



limitation prescribed under the law for filing a petition for grant of probate.

15. Furthermore, the *bona fides* of the appellant's contest are severely undermined by his conduct during the probate proceedings. In his cross-examination, the appellant engaged in blanket denials of virtually every document placed on record, going to the extent of denying his own signatures on his written statement, his *vakalatnama*, and his affidavits filed in Court. More importantly, municipal records produced by PW-1 from the MCD House Tax Department demonstrated that separate applications for mutation had been made by the 3 brothers in respect of the property concerned, which the Probate Court treated as a circumstance corroborating the respondents' case. Furthermore, a family settlement dated 29.11.2002 written and signed by the brothers acknowledged the Will, alongside a No Objection Certificate furnished by the sister, *Smt. Pushplata Sharma*. The appellant's attempt in Court to disown these filings, family settlements, and his own signatures was rightly rejected by the Probate Court as untenable.

16. Learned counsel for the appellant has also challenged the genuineness of the signatures appearing on the Will (signed in the style "*Manohar Lal Sharma*"), contending that the same do not correspond with the signatures of the testator appearing on other documents. In this regard, learned counsel has firstly referred to the letter dated 15.12.1984 (Ex. RW1/D1). The testator's signature appearing thereon is in the style "*M L Sharma*". When the appellant was confronted with



the said letter during his cross-examination as RW-1, he admitted the same insofar as the handwriting and signature of the testator are concerned. A perusal of the said letter shows that it was written only 5 days prior to the testator's death, and the testator's signature appearing thereon has been affixed in a very tight space.

Secondly, learned counsel referred to the sale deed dated 03.12.1964, written in *Urdu*, wherein the testator has signed in the style "*Manohar Lal*". It is pertinent to note that the said sale deed was not even exhibited before the Probate Court. Even otherwise, there is a gap of more than 20 years between the execution of the two documents.

Similarly, the appellant challenged the signature of *Smt. Kamla Devi* by comparing it with her name inscribed on a No Objection Affidavit dated 01.08.2003 *qua* the mutation process. However, only one document has been placed on record, and it has not been brought on record that she was habitually signing in *Hindi* over a period of time. This, therefore, does not establish that she always used to sign in this manner. In this Court's opinion, these are not sufficient to displace the testimony of the attesting witness/PW-3 that inspires confidence.

17. On the contrary, the contemporaneous documents on record, especially the letter dated 15.12.1984, demonstrate that the testator possessed a clear and sound disposing mind even after his discharge from the hospital, belying the appellant's plea of mental unsoundness. The fact that the testator was suffering from asthmatic ailments or was physically weak, does not by itself establish that he lacked



testamentary capacity. No material has been brought on record to demonstrate that such ailment impaired his understanding or mental soundness to execute the Will. When asked about the issuance of a fitness certificate *qua* the testator, PW-3 deposed that she had not asked any doctor to issue a fitness certificate for the testator before “identifying” his Will. However, she volunteered that the concerned doctor had observed during the morning rounds that the testator was stable. Even otherwise, this Court is of the opinion that, in the present facts, the absence of a medical fitness certificate, in itself, is not sufficient to displace the positive testimony of PW-3 regarding the execution of the Will and the testator’s condition at the relevant time.

18. The appellant has also raised grievances regarding the closure of his evidence and the dismissal of his applications seeking comparison of signatures through a handwriting expert. A perusal of the Probate Court’s proceedings reveals that on 08.11.2005, the Court framed issues and granted parties time to file complete documents. Subsequently, on 28.01.2008, the Probate Court allowed an application under Section 151 CPC filed by the appellant for summoning admitted signatures for handwriting comparison, granting a single effective opportunity to summon records from 1983-1985 (specifically noting applications for production of original sale deeds and Fire Department/pension records), explicitly noting that the appellant had already consumed over a year without pressing his application. Thereafter, on 11.03.2008, the Probate Court recorded that no steps had been taken by the appellant to comply with the order dated



28.01.2008, noting that counsel was erroneously seeking to bypass the rule requiring admitted documents to be brought officially on Court record before an expert could examine them. A cost of Rs.2,000/- was imposed upon the appellant, and a last and final opportunity was granted. On 22.04.2008, the Probate Court observed that the appellant's real intention was to delay the proceedings and, ultimately, on 04.08.2008, the Probate Court considered a fresh application under Section 151 CPC wherein the appellant sought to summon the 1964 *Urdu Sale Deed* and bank records from *State Bank of India, Hari Nagar Branch*, in the name of *Smt. Kamla Devi*. The Probate Court dismissed the application *vide* a detailed order dated 04.08.2008, holding that it was moved solely to protract the proceedings at their fag end.

19. Crucially, the order dated 04.08.2008 passed by the Probate Court rejecting the handwriting expert application was never challenged, and thus attained finality. At the appellate stage, the appellant has sought to urge similar grounds through an application under Order XLI Rule 27 CPC for leading additional evidence, seeking to introduce the 1964 Sale Deed and SBI bank account records.

20. Under Order XLI Rule 27 CPC, additional evidence may be permitted only in the circumstances contemplated by sub-rule (1), namely, where the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; where, notwithstanding the exercise of due diligence, the evidence was not within the knowledge of the party or could not have been produced at



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the relevant stage; or where the appellate Court requires such evidence to enable it to pronounce judgment or for any other substantial cause.

21. In the present case, the record discloses that the appellant was afforded repeated opportunities before the Probate Court to produce the proposed material, but failed to take the requisite steps, culminating in the order dated 04.08.2008 rejecting his application. The appellant has not demonstrated either the requisite due diligence or that the proposed additional evidence is necessary for this Court to pronounce judgment. Accordingly, the appellant's application for producing additional evidence is devoid of merit and stands dismissed.

22. Considering all the aforesaid, this Court finds no infirmity in the impugned judgment passed by the Probate Court and the same is upheld. The present appeal is accordingly dismissed.

23. The present appeal, along with the pending application, is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 18, 2026

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