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

Reserved on: 02.07.2025
Pronounced on: 08.08.2025

\+ FAO(OS) 258/2017

SATYA DEV BHARAL .....Appellant

Through: Mr.Madan Lal Sharma, Ms.Tejaswini Verma, Mr.Priyankar Kaushik and Mr.Vikrant Malwal, Advs.

versus

KRISHN DEV BHARAL & ORS .....Respondents

Through: Mr.S.K. Bhaduri, Ms.Shreyanjana Bag, Ms.Rimpy Rohilla, Advs. for R-1-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

NAVIN CHAWLA, J.

1. This appeal has been filed by the appellant, challenging the judgment dated 08.08.2017 passed by the learned Single Judge of this Court in TEST.CAS.03/2002, titled ***Krishan Dev Bharal & Anr. v. State & Ors.***, allowing the said petition filed by the respondent nos.1 and 2 herein, granting them Probate in respect of the Will dated 26.07.1994 executed by late Shri Bhadar Sain (**Ex.PW-2/1**) (hereinafter referred to as, 'subject Will') in favour of the respondent nos.1 and 2.

2. The respondent nos. 1 and 2 had filed the above Probate Petition under Section 276 of the Indian Succession Act, 1925 (in

short, 'ISA'), praying for grant of Probate/Letter of Administration in respect of the moveable and immoveable properties bequeathed in their favour by late Shri Bhadar Sain (hereinafter referred to as, 'Testator'), by way of the subject Will.

3. It was claimed that the Testator had passed away on 08.01.2000, having executed the subject Will in full senses and sound disposing mind, out of his free will, and without any undue pressure, influence and coercion from any corner whatsoever.

4. The petition was accompanied with an affidavit of one of the attesting witnesses, Shri Dhan Singh, who was later examined by the petitioners as PW-2.

5. The petition was opposed by way of common objections filed by the appellant as also by the respondent nos.3 and 4 herein.

6. In their objections, it was stated that the subject properties are coparcenary properties and, therefore, the Testator had no right to execute a Will in respect thereto. It was further stated that the Testator was of feeble mind and had not executed the subject Will. It was stated that the Testator was more than 93 years of age at the time of the execution of the subject Will and was running ill-health and was incapable of understanding things. It was further stated that the Testator had also executed many Wills from time to time, bequeathing the property to different heirs in different proportions, sometimes alleging the properties to be self acquired and sometimes alleging them to be ancestral properties.

7. The objectors denied that the Testator had signed the subject

Will in the presence of the witnesses or that the witnesses had signed the subject Will in the presence of the Testator. It was also denied that the Testator had executed the subject Will with his free will and without undue pressure, influence or coercion. Instead, it was stated that the respondent no.1 had exercised undue influence on the Testator and had induced him to deliver all his moveable assets to the respondent no.1 so that he could run his packaging and cheese factory at property bearing No.85, Gautam Nagar, Delhi.

8. Interestingly, there was no objection taken that the subject Will does not bear the signatures of the Testator.

9. The respondent no.4 also set up another Will dated 08.03.1985 and stated that he had already filed another Probate Case bearing No. 42/2000, titled ***Manu Dev Bharel v. State & Ors.***

10. The respondent nos.1 and 2 filed their reply to the objections, whereafter the following issues were framed on 23.05.2006:-

> *"(i) Whether Sh. Bhader Sain executed legal and valid Will dated 26.7.1994? OPP*
> *(ii) Relief."*

11. The respondent nos.1 and 2 examined the respondent no.1 as PW-1; Shri Dhan Singh, one of the attesting witnesses to the subject Will as PW-2; Mr.Vimal Kumar, Head Clerk from the Office of Sub-Registrar-V, Mehrauli, Delhi as PW-2 (wrongly mentioned as PW-2), and Mr.Manoj Sagar, LDC, Sub-Registrar-III, Asaf Ali Road, Delhi as PW-3.

12. The appellant examined himself as RW-1, the sole witness. The other respondents did not enter the witness box. They have also not

challenged the grant of Probate by way of the Impugned Judgment.

13. In his evidence by way of affidavit (**Ex.PW-1/A**), the respondent no.1 (PW-1) basically deposed the contents of the Probate Petition. He further deposed that the respondent no.3 had earlier filed a Suit, being Suit No.858/1987, *inter alia*, seeking an injunction in respect of the property bearing No.85, Gautam Nagar, New Delhi, which was declined by an Order dated 15.01.1990 (**Ex.PW-1/3**). The same was challenged in an appeal, which was dismissed by the Division Bench of this Court *vide* its Order dated 26.02.1990. The said Suit was thereafter settled and an application in this regard was filed before the learned Single Judge, being I.A. No.11372/1991 (**Ex.PW-1/4**). The Suit was disposed of on the basis of the said application *vide* Order dated 31.10.1991 (**Ex.PW-1/5**).

14. The respondent no.1 was cross-examined by the learned counsel for the appellant, firstly along the lines that the property was ancestral in nature. He was also cross-examined on a property sold by him claiming that it belonged to the Testator. These suggestions were denied by him. He was also cross-examined on various other properties and bank accounts, details of which need not be given here as they are not relevant to the controversy that is to be adjudicated herein. He stated that the Testator had passed away at an age of approximately 100 years. He denied the suggestion that after the operation for prostrate, approximately in the year 1991, the condition of the Testator deteriorated or became precarious or that he lost his memory and was unable to walk. He also denied the suggestion that

after the year 1991, the Testator did not posses sound mind. He further stated that he knows Shri B.D. Saini, Advocate as also Shri Dhan Singh, one of the witnesses to the Will, who is his neighbour and also the father of Shri B.D. Saini, Advocate. He admitted that he is on visiting terms with Shri Dhan Singh. Importantly, he stated that he had no personal knowledge about the contents of the subject Will until it was given to him after the death of the Testator. He also admitted that he had no knowledge about where the subject Will was executed or registered. He stated that he got the subject Will from the almirah of the Testator after four-five months of the death of the Testator. He denied the suggestions that the subject Will was forged by himself, Shri B D Saini, Advocate and Shri Dhan Singh.

15. One of the attesting witnesses, Shri Dhan Singh (PW-2), filed his evidence by way of affidavit (**Ex.PW-2/A**), stating therein that he knew the Testator and that the Testator during his lifetime had executed the subject Will. He identified his signatures on the subject Will as well as those of the Testator. He stated that he had signed the subject Will in the presence of the Testator and the other witness to the subject Will, Shri G.C. Sharma. He stated that the other witness to the subject Will, Shri G.C. Sharma, had also signed the subject Will in the presence of PW-2, as also the Testator. He further stated that the Testator too signed the subject Will in the presence of PW-2 and Shri G.C. Sharma, after understanding the contents thereof. He stated that at the time of the execution of the subject Will, the Testator was in a sound disposing mind and was well aware of the contents of the

subject Will.

16. As much has been contended by the learned counsel for the appellant in paragraph 6 of the evidence by way of affidavit of PW-2, the same is reproduced hereinunder:

> *"6. That I further state that I can identify the signatures of Sh. Bhadar Sain in the said WILL. My signature are at **point "A"** and the signature of said another attesting witness namely Sh.G.C. Sharma are at **point "B"** in the said WILL dt. 26/7/1994. I identify the signature of Sh G.C. Sharma."*

17. PW-2 was also cross-examined by the learned counsel for the appellant. He stated that he used to meet the Testator 10 to 20 times a year. He stated that he knew the Testator from when the Testator used to reside in village Masjid Moth, where he also used to reside, whereafter he shifted to Gautam Nagar. He stated that the subject Will was drafted by his son, Shri B.D. Saini, who is a practicing Advocate. He denied the suggestions that Shri B.D. Saini is an associate of the counsel for the respondent nos.1 and 2 herein, or that the said counsel was his tenant. He, however, admitted that Mr.Bhaduri is his advocate in a matter in Tis Hazari Court filed against his tenant. He also admitted that his affidavit was prepared in the chamber of Mr.Bhaduri. He stated that the Testator had signed the subject Will in his presence and he could identify the signatures of the Testator, and he had seen the Testator signing in the capacity of patron of the Arya Samaj Mandir, Masjid Moth. He stated that the subject Will was first signed by his son, Shri B.D. Saini, by whom it was also drafted, and then by

him. He identified the signatures of Shri B.D. Saini on the subject Will. Later, at the time of signing of the statement, he stated that the subject Will was first signed by his son, Shri B.D. Saini, and then it was signed by three/four other persons, whereafter, it was signed by him. In the Order dated 06.03.2007, the learned Joint Registrar, who was recording the evidence, has observed in his remarks that the witness- PW-2 was changing his statement in this regard.

18. Importantly, PW-2 stated as under:

> *"...I cannot say anything in face of the suggestion that the will Ex.PW2/1 was manipulated and forged by petitioner No.1 Mr.Krishan Bharal and my son, Mr.B.D. Saini. Again said there was no question of my son Mr. B.D. Saini manipulating or forging the Will Ex.PW2/1 and the site plan along with petitioner no.1 Mr.Krishan Dev Bharal."*

19. He denied that the suggestions that the subject Will was not signed by the Testator or not got registered by the Testator.

20. Importantly, he further stated as under:

> *"Volunteer, two lines on Will Ex.PW2/1 were written by Mr.Bhadar Sain in his own hand writing."*

21. He denied the suggestion that these lines had not been written by the Testator in the presence of PW-2. He also denied the suggestion that the other witness to the subject Will had not signed the same in his presence.

22. Mr.Vimal Kumar, Head Clerk of the Office of the Sub-Registrar-V, Mehrauli, Delhi, was examined as PW-2 (though wrongly mentioned as PW-2). He stated that he could not locate the

subject Will bearing registration no.3875, Volume III, Book No.805 dated 04.08.1994, which was sought to be summoned by the respondent no.1. He stated that the details furnished are incorrect and the same is not registered in the said office.

23. The respondent nos.1 and 2 then examined Mr.Manoj Sagar, LDC, Sub Registrar-III, Asaf Ali Road, Delhi as PW-3. He brought the subject Will and stated that the same was registered along with site plan on 04.08.1994 *vide* Registration No.3075, Book No.III, Vol. No. 805 on pages 153 to 161. He admitted that as per the endorsement on **Ex.PW2/1,** the subject Will produced by the respondent nos.1 and 2 shows that it was registered in the office of Sub-Registrar-III *vide* Registration No.3875. He also stated that as per the endorsement on the back side of the site plan, the same was registered *vide* Registration No.3675 or 3875, Book No.III, Vol. No.805 on pages 153 to 161.

24. He was called upon to produce the Index to Book No.III, Vol. No.805, which he produced on 28.03.2014, and exhibited the relevant entry as **Ex.PW3/X1**, wherein the subject Will (**Ex.PW2/1**) was shown to be registered at Serial No.9 as Document No.3875. He admitted that the starting 1 or 2 pages of the register were torn and the Index Register was not paginated. He also admitted that the Index Register does not bear the signatures of the Sub-Registrar or of any other official at any page. He admitted that the entries in the Index Register are handwritten. The Court observed that one torn page bearing the date 08.09.1994 had been bounded between pages bearing

the date 02.08.1994 and 30.08.1994 in the Index Register. The witness admitted that there were cuttings and overwriting in the entries contained in the Index Register, which had not been initialled by any official.

25. As far as the appellant is concerned, he filed his evidence by way of affidavit (**Ex.R2W1/A**), wherein he stated that in the year 1991, the Testator had undergone prostrate surgery from which he could not fully recover and from the year 1992, the Testator steadily and progressively lost control of his senses. He stated that by the end of December, 1993, the Testator had completely lost control of his mental cognitive faculties and had become immobile and his condition kept on deteriorating and he ultimately died in the said condition on 08.01.2000. He stated that the Testator was living with the respondent nos.1 and 2 herein, and his complete medical records were in the power and possession of the respondent nos.1 and 2. He stated that subject Will does not bear the signatures or thumb impression of the Testator. He stated that the Testator, having lost control of his senses, was bedridden and, therefore, had not gone to the Office of the Sub-Registrar on 04.08.1994 for the alleged registration of **Ex.PW2/1**. He stated that the respondent no.1, in collusion and conspiracy with his friend, Sh. B.D. Saini, Advocate and his father, Shri Dhan Singh, got the signatures and the thumb impression of the Testator forged and fabricated on the subject Will and thereafter, in collusion with the officers of the Sub-Registrar, manipulated to put the seal of the Sub-Registrar on the subject Will to show the registration of the same. He

stated that the properties mentioned in the subject Will were joint and ancestral. He stated that even the Will produced by Mr. Manoj Sagar (PW-3) (**Ex.PW3/1**) has not been executed or got registered by the Testator and is also fabricated and manufactured by the respondent no.1 and his associates, in collusion with the staff of the concerned Sub-Registrar.

26. He was cross-examined by the counsel for the respondent nos.1 and 2. He, apart from admitting the proceedings in Suit No. 858/1987 referred to hereinabove, also admitted that he has filed a Suit for declaration, being Suit No.961/2005, challenging the compromise Order dated 31.10.1991, which he withdrew on 19.11.2014. The copy of the plaint and the order were exhibited as **Ex.R2W1/P1(Colly.)**. He was given suggestion that he was deposing falsely in his affidavit by way of evidence.

27. After conclusion of the evidence and upon hearing the learned counsels for the parties, the learned Single Judge passed the Impugned Order granting Probate of the subject Will in favour of the respondent nos.1 and 2.

28. As noted hereinabove, the Impugned Order has only been challenged by the appellant and not by the respondent nos.3 to 8.

Submissions of the learned counsel for the appellant

29. The learned counsel for the appellant submits that the due execution and attestation of the subject Will has not been proved by the respondent nos.1 and 2 in accordance with Section 63(c) of the ISA and Section 68 of the Indian Evidence Act, 1872 (hereinafter

referred to as ‘IEA’).

30. He submits that in his cross-examination, PW-2 sought to contend that the Will was first signed by his son Shri B.D. Saini, and thereafter by himself, which he later changed to say that after the signing of the subject Will by Shri B.D. Saini, it was signed by three to four other persons and thereafter was signed by him. He submits that this improvement was even commented upon by the learned Registrar who was recording the evidence.

31. He further submits that PW-2 in his evidence by way of affidavit does not even identify the signatures of the Testator, but only generally states that subject Will was signed by the Testator. He submits that this omission is very vital and it must, therefore, be held that the subject Will was not proved.

32. He submits that the evidence by way of affidavit of PW-2 was prepared by the counsel for the respondent nos.1 and 2, which shows the collusion between PW-2 and the respondent nos.1 and 2, because of which the testimony of PW-2 cannot be relied upon. He submits that the onus of proving a Will is on its propounder, and the respondent nos.1 and 2 have failed to prove the execution of the subject Will by the Testator and have also failed to explain the other doubtful circumstances surrounding the subject Will. In support, he places reliance on the judgements of the Supreme Court in ***Shivakumar & Ors. v. Sharanabasappa & Ors.***, (2021) 11 SCC 277; ***Janki Narain Bhoir v. Narayan Namdev Kadam***, (2003) 2 SCC 91; ***Moturu Nalini Kanth v. Gainedi Kaliprasad***, 2003 SCC OnLine SC

1488; and ***Murthy & Ors. v. C. Saradambal & Ors.***, AIR 2022 SC 167.

33. He submits that mere registration of a Will does not dispense with the requirement of proof of due execution and attestation of the Will. In support, he places reliance on ***Bhagat Ram v. Suresh & Ors.***, AIR 2004 SC 436, and; ***Moturu Nalini Kanth*** (supra).

34. He further submits that even otherwise, there are serious doubts regarding the registration of the subject Will. He submits that the Will produced by PW-3 (**Ex.PW3/1**) bears the registration no.3075, while the subject Will (**Ex.PW2/1**) bears the registration no.3875. He submits that the concerned Sub-Registrar has not been examined to explain this discrepancy. Placing reliance on the judgements of the Supreme Court in ***S. Srinivasa & Ors. v. S. Padmavathamma***, (2010) 5 SCC 274; ***Rani Purnima Debi v. Kumar Khagendra Narayan Deb***, AIR 1962 SC 587 and ***Gurdial Kaur v. Kartar Kaur***, AIR 1998 SC 2861, he submits that, therefore, the registration of the subject Will is itself doubtful.

35. He submits that even otherwise there are interlineations of four lines in Urdu language in **Ex.PW2/1**, and the same have not been countersigned by the Testator nor has an entry in this regard been made by the Registrar in the Register in accordance with Section 20 of the Registration Act, 1908. Placing reliance on the judgements of the Supreme Court in ***Valiammal Rangarao Ramachar v. Muthukumaraswamy Gounder & Ors***, (1982) 3 SCC 508, and ***D.R. Rathna Murthy v. Ramappa***, (2011) 1 SCC 158; and of the Karnataka

High Court in ***Padmini Raghavan v. H.A. Sonnappa & Ors.***, 2013 SCC OnLine Kar 8544, and; ***Suresh Malani v. K.B. Munivenkata Reddy***, 2021:KHC:19713-DB, he submits that, therefore, the document is *void ab-initio* and cannot be relied upon.

36. He further submits that **Ex.PW3/1** produced by Mr.Manoj Sagar is different from **Ex.PW2/1**, the subject Will. He submits that in terms of Rule 29 and Rule 39 of the Delhi Registration Rules, 1976, the office copy with the Sub-Registrar has to be an identical and exact replica of the original document. He submits that the variance in the two documents itself shows that **Ex.PW2/1** is not a genuine document.

37. He submits that even otherwise, the disposition in the subject Will is unnatural and improbable. He submits that the appellant and the respondent nos.3 to 6 are the children from the first wife of the Testator, but, by the subject Will, have been excluded from inheritance, while the property has been bequeathed in favour of the respondent nos.1 and 2, the son and daughter from the second wife of the Testator. He submits that this itself casts a doubt on the genuineness of the subject Will. In support, he places reliance on ***Bharpur Singh & Ors. v. Shamsher Singh***, (2009) 3 SCC 687, ***Narajan Umeshchandra Joshi v. Mrudula Jyoti Rao***, AIR 2007 SC 614 and ***Murthy*** (supra).

38. He submits that the Impugned Order is also cryptic and not in terms of Order XX Rule 4 of the Code of Civil Procedure, 1908 and Section 295 of the ISA, which mandate that there must be a detailed

judgment in a Probate Petition, just like a Civil Suit.

39. He fairly admits that the plea that the properties mentioned in the subject Will were not the self-acquired properties of the Testator and that the Testator was not competent to execute a Will in their regard, cannot be a subject matter of the Probate Petition. He submits that this challenge of the appellant shall be taken by him in appropriate proceedings.

Submissions of the learned counsel for the respondent nos. 1 & 2

40. On the other hand, the learned counsel for the respondent nos.1 and 2 submits that the primary case of the appellant before the learned Single Judge was that the properties bequeathed by way of the subject Will were ancestral in nature. He submits that this issue has rightly been not pressed by the appellant in the present appeal as the question of title to the property cannot be determined in a Probate Petition. In support, he places reliance on the judgment of this Court dated 13.10.2009 in Probate Case No. 19/1992 titled ***Laxman Das v. State***.

41. He submits that even otherwise, the appellant is a habitual litigant. He had filed the Suit, being Suit No.961/2005, challenging the compromise arrived at including between himself and the Testator in Suit No.858/1987, which he, however, later withdrew on 19.11.2014. He submits that therefore, even otherwise the appellant is estopped from challenging the title to the properties bequeathed by the Testator in the subject Will.

42. As far as the due execution of the subject Will is concerned, he submits that PW-2 has not only proved the due execution of the

subject Will but has also deposed on the sound disposing mind of the Testator. He submits that apart from relying upon vague assertions, the appellant has not been able to discredit PW-2 in his cross-examination.

43. As far as non-compliance with Section 20 of the Registration Act is concerned, he submits that not only was this objection not taken before the learned Single Judge, but even otherwise, there are no interpolations or interlineations in the subject Will. He submits that the handwritten words cannot be said to be interlineations or amendments to the subject Will. He submits that even otherwise, registration being not necessary for the enforcement of a Will, any defect in registration cannot cast a doubt on the genuineness of the subject Will.

44. He further submits that the appellant has only vaguely stated that the subject Will has been executed under coercion and undue influence, and the appellant has not produced any cogent evidence in support of this plea. He submits that the onus of proving the same would be on the appellant. In support, he places reliance on ***Sridevi & Ors. v. Jayaraja Shetty & Ors.***, (2005) 2 SCC 784.

Analysis and Findings

45. We have considered the submissions made by the learned counsels for the parties.

46. Section 63 of the ISA provides the set of rules in terms of which a Will shall be executed. It reads as under:

> *"**Section 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 acknowledgment of his signature or mark, or of 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."*

47. Section 68 of the IEA provides as to how an attested document is to be proved. The said Section 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:*

> *Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."*

48. The Supreme Court in ***H. Venkatachala Iyengar v. B.N. Thimmajamma & Ors.***, AIR 1959 SC 443, while interpreting the requirements of a valid Will under Section 63 of the ISA, has clearly distinguished the nature of proof required for a Will to be proved. We may quote from the said Judgment as under:

> *"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. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 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 Sections 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, Sections 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 Section 63 of the Indian 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 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 Parcq in Harmes v. Hinkson [(1946) 50 CWN 895] "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."*

(Emphasis Supplied)

49. In ***Pentakota Satyanarayana & Ors. v. Pentakota Seetharatnam & Ors.***, (2005) 8 SCC 67, the Supreme Court has explained how the requirement of Section 68 of the IEA is to be met by the propounder of the Will, as under:

> *"22. ..... Section 68 of the Evidence Act, 1872 deals with proof of execution of document required by law to be attested. This section lays down that if the deed sought to be proved is a document required by law to be attested and if there be an attesting witness alive and subject to process of the court and capable of giving evidence, he must be called to prove execution. Execution consists in signing a document written out, read over and understood and to go through the formalities necessary for the validity of legal act.*
>
> *****
>
> *It is clear from the definition that the attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument or has seen some other persons sign the instrument in the presence and by the direction of the executant. The witness should further state that each of the attesting witnesses signed the instrument in the presence of the executant. These are the ingredients of attestation and they have to be proved by the witnesses. The word "execution" in Section 68 includes attestation as required by law."*

(Emphasis Supplied)

50. In ***Sridevi*** (supra), with regard to the onus that rests on the propounder of a Will, the Supreme Court has held as under:

> *"14. The propounder of the will has to show*

> *that the will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. ..."*

51. More recently, in ***Shivakumar*** (supra), the Supreme Court, summarised the principles governing the adjudicatory process concerning proof of a Will, as under:

> *"12. For what has been noticed hereinabove, the relevant principles governing the adjudicatory process concerning proof of a will could be broadly summarised 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.*

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 abovenoted 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 circumstances 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."*

52. From the above, it would be apparent that the onus of proving the Will is on the propounder thereof. The propounder has to prove that the Will being propunded by them bears the signatures of the Testator and has been duly attested by two or more witnesses, each of whom had seen the Testator sign the said Will and each of whom had also signed the Will in the presence of the Testator. It also has to be

proved that the Testator was in a sound disposing mind and the Will had been executed of his free will and without any coercion or undue influence. The propounder also has to explain away all suspicious circumstances that may surround the Will. The standard of proof, however, is not the one beyond reasonable doubt, but of preponderance of probabilities. Further, the suspicious circumstance must be real, germane and valid and not merely the "fantasy of the doubting mind".

53. Judging the subject Will on the above parameters, the respondent nos.1 and 2 produced PW-2, Shri Dhan Singh, who is one of the attesting witnesses to the subject Will. Though, the learned counsel for the appellant has, on basis of stray sentences reproduced hereinabove, sought to discredit the testimony of PW-2, in our opinion, PW-2 has withstood the cross-examination and is a reliable witness to prove due execution of the subject Will, as also to the Testator's sound disposing mind while executing the subject Will. PW-2 was known to the Testator. Though the son of PW-2 is a friend of the respondent no.1, in our opinion, the same cannot be sufficient to discredit his testimony. Similarly, only because the learned counsel for the respondent nos.1 and 2 took active part in the preparation of the affidavit of evidence of PW-2 and in producing him as a witness in the Probate Petition, the same cannot cast a doubt on his testimony. It is not unnatural for the beneficiary under a Will to request the attesting witness to the Will to depose on the due execution of the Will and, in such deposition, give assistance to the witness. Merely

because the attesting witness appeared before the Court at the request of the beneficiary of the subject Will, the same cannot cast a doubt on his testimony. The Court has to determine the credibility of the witness on the testimony that he gives and to find out if there is any inconsistency in the same or something which appears unnatural, not making him trustworthy.

54. PW-2 has stated that the subject Will was signed in his presence by the Testator; that he had signed on the subject Will in the presence of the Testator and the other witness; and the other witness, Shri G.C. Sharma had also signed the subject Will in presence of PW-2 and the Testator. Merely because PW-2 failed to specifically point out the signatures of the Testator in his evidence by way of affidavit by way of a marking, the same cannot mean that his deposition is not creditworthy, or is liable to be ignored.

55. The stray sentence in his cross-examination that he '*cannot say anything in face of the suggestion that the Will Ex.PW2/1 was manipulated and forged by petitioner No.1 Mr. Krishan Bharal*' was followed immediately by the sentence that '*there was no question of my son, Mr.B.D. Saini manipulating or forging the Will Ex.PW2/1 and the site plan along with petitioner no.1 Mr.Krishan Dev Bharal*.' He had specifically denied the suggestion that the subject Will and the site plan had been manipulated and forged.

56. The appellant, apart from merely contending that the subject Will was forged, has not produced any evidence in support of this assertion.

57. Coming to the submission of the learned counsel for the appellant that the Testator was not shown to be in sound disposing mind, again, apart from a self-serving statement in this regard, the appellant led no evidence to even remotely cast a doubt on the statement of the respondent no.1 (PW-1) or Mr. Dhan Singh (PW-2), that the Testator was in a sound disposing mind and understood the contents of the subject Will while executing the same.

58. On the matter of unnatural bequeath in the subject Will, it need only to be noticed that the appellant had initiated litigations against the Testator. These resulted in a settlement as far as the Suit filed by the respondent no.3 is concerned, and withdrawal of the Suit as far as the Suit filed by the appellant is concerned. It is also the own case of the appellant that the Testator was residing with the respondent no.1 at the time of his death and even before. It is, therefore, not unnatural for the Testator to have bequeathed his properties to the respondent nos.1 and 2, who were looking after him, instead of the appellant and the respondent no.3, who had initiated litigations against him. The Testator has also, in the subject Will, stated that he is not enjoying good relations with the appellant and with his family members and that litigation was initiated by the appellant against him. Further, in the subject Will, the Testator has also stated reasons for excluding the other respondents from his bequeath. Therefore, the suspicious circumstances alleged by the appellant, have been adequately explained in the subject Will as also by way of the other surrounding circumstances, by the respondent nos.1 and 2. We, therefore, do not

find any merit in the said challenge of the appellant.

59. Now, coming to the submission with respect to the discrepancy in the registration numbers of **Ex.PW2/1** and **Ex.PW3/1** as also the presence of four against two signatures in the same on every page and the handwritten note at the end, we first emphasize that the registration of a Will is not essential under the IRA or ISA. Reference in this regard is made to ***Bhagat Ram*** (supra) and ***Moturu Nalini Kanth*** (supra).

60. While there is no doubt that in terms of Rules 29 and 39 of the Delhi Registration Rules, 1976, the copy pasted on the Register Book has to be a carbon copy/duplicate of the original, Section 87 of the IRA states that nothing done in good faith pursuant to the said Act, shall be deemed to be invalid merely by reason of any defect in the procedure followed. It appears that as the registration of the subject Will took place after a few days of the execution thereof, signatures of the Testator were taken afresh in the copy attached to the Register Book. Be that as it may, even if the registration is held to be invalid, this would not make the subject Will itself invalid.

61. Similarly, not following of the mandate of Section 20 of the Registration Act as far as the handwritten portion is concerned, would not invalidate the subject Will or cast a doubt on the genuineness thereof. The handwritten portion is stated to be in handwriting of the Testator, which in its translation, reads as under:

> *"This Will has been prepared as per my desire. The same has been read over and*

explained to me in the presence of the witnesses mentioned hereinafter. The same is correct. I have appended my signatures after hearing the contents of the Will"

62. In ***Valiammal Rangarao Ramachar*** (supra), the Supreme Court was considering a case involving a sale deed wherein the fact of knowledge of a prior agreement by the vendor was inserted. From an assessment of the whole evidence, the Court found the interpolation to be not believable and, therefore, rejected the same.

63. In ***D.R. Rathna Murthy*** (supra), the Supreme Court was again considering a document of sale wherein the reconveyance clause had been inserted in an unusual manner at foot of the deed before the signatures and without endorsement. The Court from the evidence found that these interlineations were made after the execution of documents but before the registration thereof and were without the consent and knowledge of the respondent buyer therein.

64. In ***Padmani Raghavan*** (supra), the Karnataka High Court, on an examination of the evidence, found that the addition in the sale deed had been made without the consent of the party liable under it. It was held that in view thereof, the sale deed had been rendered void.

65. In ***Suresh Malani*** (supra), again, the Karnataka High Court found that there was no satisfactory explanation given for the interpolation in the document. The Court, therefore, held that this would make the document void.

66. From the above, it would be apparent that when confronted with an allegation of interpolation/interlineations in a document, the Court

has to consider whether the interpolation/interlineation was with the consent of the other party; is the interpolation/interlineation material, and; has the same been explained by the propounder of the document.

67. In the present case, the alleged interpolation/interlineation is not material to the document and has been proved to be in the handwriting of the Testator himself. What is further important is that this does not appear to have been made an issue before the learned Single Judge.

68. As far as discrepancy in the registration number of the subject Will is concerned, in our view, the same would again have no effect on the validity of the subject Will. It appears to be more a *bona fide* mistake in noting down the number on the subject Will.

69. On the submission of the learned counsel for the appellant that the impugned judgment does not meet the standard of Order XX Rule 4 of the Code of Civil Procedure, 1908, we again find no merit in the same. The learned Single Judge has considered the evidence of the parties and discussed the same and given the findings on the issues raised before it.

70. For the reasons stated hereinabove, we find no merit in the present appeal. The same is accordingly, dismissed. The parties shall bear their own costs.

NAVIN CHAWLA, J.

RENU BHATNAGAR, J.

AUGUST 08, 2025/***rv***/ns/SJ

Click here to check corrigendum, if any