

**IN THE COURT OF MS. POOJA JAIN,
ADDITIONAL DISTRICT JUDGE-03,
EAST, KARKARDOOMA COURTS, DELHI**

Suit No. 132/14

In the matter of :- Subhash Chander Bhatia Vs. Neelam Bhatia & Ors.

Shri Subhash Chander Bhatia

S/o Late Sh. Hansraj Bhatia

R/o 230, Rishi Nagar,

Rani Bagh, Delhi-110034

.....Plaintiff

Versus

1. **Smt. Neelam Bhatia**
W/o Late Sh. K.C. Bhatia
2. **Sh. Gaurav Bhatia**
S/o Late Sh. K.C. Bhatia
3. **Sh. Saurabh Bhatia**
S/o Late Sh. K.C. Bhatia
4. **Ms. Shagun Arya (Minor)**
(Represented through guardian)
All LR's of Late Sh. K.C. Bhatia (since deceased).
All r/o 232, New Layalpur Colony, Delhi-110051.
5. **Sh. Satpal Bhatia**
S/o Late Sh. Hansraj Bhatia
R/o B-49, Shakti Apartments
Sector-9, Rohini, Delhi-110085.
6. **Smt. Bhawna Bhatia**
D/o Late Baldev Raj Bhatia
W/o Sh. Jagdish Bhatia
7. **Smt. Priyanka Bhatia**
D/o Late Baldev Raj Bhatia & Smt. Rita Bhatia
W/o Sh. Lokesh Bhatia
Both defendant no.6 & 7 LR's of Late Sh. Baldev Raj Bhatia.
Both defendant no.6 & 7 r/o 890, Naag Mandir, Gali no.6, Jain
Colony, Rama Vihar, Delhi-110084.

.....Defendants

Date of Institution	: 15.01.2014
Date of Reserving Order	: 21.12.2023
Date of Decision	: 30.01.2024

SUIT FOR PARTITION

JUDGMENT

1. The case of the plaintiff, in the present suit, is that he is the absolute owner of $\frac{1}{4}$ share of suit property bearing No. 232, New Layalpur, Delhi-51 ad-measuring 200 sq. yards and constructed portion thereon comprising of six rooms with two toilet, bathroom on the ground floor and one room, toilet bathroom at first floor and is seeking demarcation of his one -forth share of the suit property by meets and bounds by instituting the present suit.

2. It is stated in the plaint that the suit property is in the name of father of the plaintiff Mr. Hansraj Bhatia(since deceased) and that Late Hansraj Bhatia was the absolute owner of the suit property and has purchased the suit property during his life time by virtue of registered sale deed dt. 06.05.1979; Late Hansraj Bhatia expired intestate on 26.06.1984, leaving behind his wife namely Smt. Veerawali Bhatia, and four sons namely Satpal Bhatia, Baldev Raj Bhatia, Subhash Chander Bhatia(plaintiff) and K.C. Bhatia; Smt. Veerawali also expired intestate on 24.12.1988. Hence Satpal Bhatia, Baldev Raj Bhatia, Subhash Chander Bhatia and K.C. Bhatia became entitled for $\frac{1}{4}^{\text{th}}$ share in the assets of Late Hansraj Bhatia. It was agreed that K.C. Bhatia shall be permitted to reside in the suit property as he was also carrying out commercial activity from the suit property and the plaintiff shall not claim any compensation/rent for the next 11 years towards the user of the property without affecting the right, title interest and also the constructive possession of the plaintiff in the suit property, hence plaintiff remains the co-owner and has been in constructive possession of the suit property. In the year 2011, plaintiff made it clear to K.C. Bhatia, that he is desirous of selling his $\frac{1}{4}^{\text{th}}$ share in the suit property and therefore let there be talks for the purpose of

valuation so that the plaintiff's share can be bought over by either K.C. Bhatia or any other L.R. In the month of October 2009 one of the son Sh. Baldev Raj Bhatia also expired and during his life-time, Baldevraj Bhatia got married twice, firstly he got married to Smt. Prem Bhatia (since deceased), who expired in the month of April 1993 and thereafter he got married again to Smt. Rita Bhatia (since deceased). Smt. Rita Bhatia also expired sometime in the year 2004 and from the wedlock of Late Baldev Raj Bhatia and Late Smt. Prem Bhatia a daughter namely Bhawana Bhatia (Defendant No.6) was born and from the wedlock of Late Baldev Raj Bhatia and Late Smt. Rita Bhatia, another daughter namely Priyanka Bhatia (Defendant No.7) was born, both daughters are married.

It is also averred in the plaint that on 02.08.2013, K.C. Bhatia also expired leaving behind his L.Rs namely Smt. Neelam (wife), Gaurav Bhatia and Saurabh Bhatia(both sons, Defendant No.2 and 3) and one daughter of pre-deceased daughter since expired on 01.01.2012 (Aarti Bhatia) namely Ms. Shagun Arya (Defendant No.4); that it was always agreed and understood between the L.Rs of Late Hansraj Bhatia and Smt. Veerawali Bhatia that the suit property shall devolve upon all the four sons and they shall have equal $1/4^{\text{th}}$ share in the suit property, however, the L.Rs of K.C. Bhatia has now been claiming themselves to be the owners of the suit property with right to sell, alienate, create third party interest in the same. Defendant No.1 to 3 are deploying pressure tactics on the plaintiff to give up his lawful share in the suit property and on every occasion they have refused to part with the suit property and that recently in the month of December 2013, the plaintiff come to know through his sources in the market that the defendants i.e. L.Rs of K.C. Bhatia are trying to sell the suit property and are intending to create a third party right and interest in the same. Hence, the present suit is filed praying for following reliefs:

(a) Preliminary Decree of Partition in respect of the property i.e.

property bearing No. 232, New Layalpur, Delhi-51 ad-measuring 200 sq. yards and constructed portion thereon between plaintiff and the defendants holding 1/4th shares of plaintiff.

(b) Pass a Final Decree for Partition in respect of property bearing No. 232, New Layalpur, Delhi-51 ad-measuring 200 sq. yards and constructed portion thereon, thereby directing division of the suit property by metes and bounds and further direct the parties to put in possession in their respective shares.

3. The summons of the suit were issued to the defendants and Sh. S.P. Pandey, Ld. Counsel for the defendant Nos. 1 to 4 put his appearance on their behalf but, none appeared on behalf of the defendants No. 5 to 7 despite due service, however, only Defendant Nos. 1 to 3 filed WS in the present matter and defendant No.4 has adopted the written statement filed by defendant no.1 to defendant no.3.

4. Vide order dated 27.10.2014, the right to file WS and reply on behalf of defendant no.5 to defendant no.7 stand closed.

5. Vide order dated 16.01.2017, following issues were framed:

(i). Whether the plaintiff is entitled for preliminary decree of partition holding 1/4th share of the plaintiff in the suit property? OPP.

(ii). Whether in pursuance to passing of the preliminary decree, plaintiff is entitled for a final decree for partition thereby directing division of suit property? OPP

(iii). Whether the father of the plaintiff had executed a WILL dt. 27.04.1983 in favour of his son Late K.C. Bhatia regarding the case property? OPD

(iv). Relief.

6. On 13.03.2018, to prove his case, plaintiff Subhash Chander Bhatia, examined himself in his evidence and tendered his affidavit Ex. PW1/A, bearing his signatures, at points 'A' and 'B', also relied upon the documents, i.e.:

- (i). Certified copy of sale deed dt. 06.05.1970 as Ex.PW.1/1 (Colly four sheets).
- (ii). Photocopy of table is mark A.
- (iii). Acknowledged copy of complaint dt. 06.03.2011 as Ex.PW1/2 (objected to by counsel for the Defendant No.1 to 4 with regard to mode of proof) and, thereafter, plaintiff's evidence was closed and the matter was fixed for defence evidence.

7. On 04.12.2019, to prove her case, defendant No.1 Smt. Neelam Bhatia examined herself in her evidence and tendered her affidavit Ex. DW1/1, bearing her signatures, at points 'A' and 'B', also relied upon the document, i.e.

- (i). WILL dt. 27.04.1983 as Ex.DW1/1.
- (ii). Letter of mutation issued by MCD as Ex.DW1/2.

8. Defendants also examined (I) Sh. Jagmohan, ASO from Assessment and Collection Department, EDMC, Shahdara Zone as DW2 who brought the summoned record (ii) Sh. Naveen Gandas, Recordkeeper from Department of Delhi Archives, 18A Satsang Marg, Special Institutional Area, New Delhi as DW3 who proved the registration of WILL dt. 27.04.1983 executed by Hans Raj Bhatia, vide registration no. 632, book No.3, volume No. 96, page no. 1213, dt. 28.04.1983 as Ex.DW3/A (OSR) and (iii) Sh. Y. L. Sachdeva s/o Late Sh. Punnu Ram as DW4 to prove the execution of WILL dt. 27.04.1983 already Ex.DW1/1 (OSR) and, thereafter, evidence of defendant No. 1 was closed. The matter

was fixed for final arguments.

9. Final arguments heard on either side.

10. **Arguments advanced by Ld. Counsel for plaintiff.**

- a) It is an admitted fact that the suit property belongs to deceased father of plaintiff namely Sh. Hansraj Bhatia, who had four sons i.e. plaintiff, husband of defendant no.1, Defendant No.5 and father of Defendant Nos. 6 & 7.
- b) There is no documentary or oral evidence brought on record by the defendant to show what was given to other three sons or as to why all three sons except husband of defendant no.1 were excluded or why and in what manner the plaintiff was de-barred by the deceased father as alleged by the defendant no.1.
- c) The contents of alleged will are in English, though the signature of testator is in Urdu. The defendant has not proved as to who translated the contents of Will to the testator, nor the defendant got verified the signature of testator with his admitted signature.
- d) In the alleged Will, addresses of attesting witnesses are not mentioned.
- e) DW4 drafted the Will and admitted in his cross-examination that he did not know the testator and also not checked the identity of executor of the Will. In such circumstances, the deposition of this witness is not sufficient to prove the validity and execution of Will.
- f) The defendant has not put any effort to call the second attesting witness of Will Sh. Ram Singh.
- g) The copy of alleged Will placed on record by the defendant

no.1(Ex.DW1/1) and copy of Will produced by DW3 Ex.DW3/A are not similar.

11. **Arguments advanced by Ld. Counsel for defendant.**

- a. The draftsman DW4 has been examined who was also an attesting witness of the Will.
- b. DW3 has also been called with summoned record who has proved that the Will Ex.DW1/1 is a registered document. No question as regards to falsity of documents was asked by plaintiff's counsel during his cross-examination.
- c. If the plaintiff alleged the Will Ex.DW1/1 to be forged or false, it was his duty to prove that allegation.

12. No other point is argued by respective counsels.

Issues Wise Findings:

13. I have given thoughtful consideration to the submissions made on behalf of both the parties, considered the relevant provisions of the law, pleadings of both the parties, testimonies of witnesses and material placed on record. The issue wise finding is as under:

ISSUE No.3:

14. *“Whether the father of the plaintiff had executed a WILL dt. 27.04.1983 in favour of his son Late K. C. Bhatia regarding the case property? OPD”*

The onus of proving this issue was upon the defendant.

15. Before advertng to the facts of the present case, it is pertinent to reproduce the relevant provisions dealing with the validity and execution of the Will.

Section 63 of Indian Succession Act, 1925 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.”

Section 68 of Indian Evidence Act, 1872 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 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.] [Inserted by Act 31 of 1926, Section 2.]”

16. It would be useful to refer to the following judgments of Hon’ble Supreme Court of India on proof of wills.

a). In the case of **H. Venkatachala Ayyenger vs. B.N. Thimmajamma** (AIR 1959) SC 443. The Hon’ble Apex Court has clearly distinguished the nature of proof required for a testament as opposed to any other document. The relevant portion of the said judgment reads as under:

"18. 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, 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 hand writing, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the hand writing 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."

b). In **Bharpur Singh & Ors. vs. Shamsheer Singh**, 2009 (3) SCC 687 at para 23, the Hon'ble Supreme Court has narrated a few suspicious circumstances as being illustrative but not exhaustive in the following manner:

"23. Suspicious circumstances like the following may be found to be surrounded in the execution of the will: (i) The signature of the testator maybe very shaky and doubtful or not appear to be his usual signature. (ii) The condition of the testator's mind may be very feeble

and debilitated at the relevant time.(iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.(iv) The dispositions may not appear to be the result of the testator's freewill and mind.(v) The propounder takes a prominent part in the execution of the will.(vi) The testator used to sign blank papers.(vii) The will did not see the light of the day for long.(viii) Incorrect recitals of essential facts.”

c). In **Naranjan Umesh Chandra Joshi vs. Mrudula Jyoti Rao**, (2006)13 SCC 433, in para 34 to 37, the Hon'ble Apex Court has observed as under:

“34. There are several circumstances which would have been held to be described by this Court as suspicious circumstances:

- (i) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;*
- (ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;*
- (iii) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit.*

35. We may not delve deep into the decisions cited at the Bar as the question has recently been considered by this Courts in B. Venkatamuni v. C.J. Ayodhya Ram Singh [(2006) 13 SCC449], wherein this Court has held that the court must satisfy its conscience as regards due execution of the will by the testator and the court would not refuse to probe deeper into the matter only because the signature of the propounder on the will is otherwise proved.

36. The proof of a will is required not as a ground of reading the document but to afford the Judge reasonable assurance of it as being what it purports to be. We may, however, hasten to add that there exists a distinction where suspicions are well founded and the cases where there are only suspicions alone. Existence of suspicious circumstances alone may not be sufficient. The court may not start with a suspicion and it should not close its mind to find the truth. Are solute and impenetrable incredulity is not demanded from the Judge even if there exist circumstances of grave suspicion.”

d). In the case of **MEENA PRADHAN & ORS. vs KAMLA PRADHAN & ANR.**, the Hon,ble Supreme Court observed as under:-

“9. A Will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the testator. Since

the testator/testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the Will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation.

10. Relying on H. Venkatachala Iyengar v. B.N. Thimmajamma, 1959 Supp (1) SCR 426 (3 Judge Bench), Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135 (3 Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91 (2 Judge Bench) Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joy kumar Singh, (2009) 4 SCC 780 (3 Judge Bench) and Shivakumar v. Sharanabasappa, (2021) 11 SCC 277 (3 Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the Will:

i. The court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;

ii. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

iii. A Will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) 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 the said signature or affixation shall show that it was intended to give effect to the writing as a Will; (b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary; (c) Each of the attesting witnesses must have 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 such signatures; (d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

iv. For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

v. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

vi. If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;

vii. Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

viii. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.

ix. The test of judicial conscience has been evolved for dealing with

those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will;

x. sound, certain and disposing state of mind and memory of the testator at the time of execution;

xi. testator executed the Will while acting on his own free Will;

xii. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind'¹. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc.

11. In short, apart from statutory compliance, broadly it has to be proved that (a) the testator signed the Will out of his own free Will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not executed under any suspicious circumstances.

17. Now coming to the facts of present case, on perusal of record this court is of the considered opinion that the arguments advanced by Id. Counsel for plaintiff are borne out from the record and tenable for reasons mentioned below:-

- i. Propounded will of late Shri Hansraj Bhatia dated 27th April 1983 is a two-page document written in English. On perusal of Will, it is revealed that testator executed his first Will on 5 May 1982 which was also got registered before the sub- registrar iv, Delhi. However this first Will has not been produced before this court.
- ii. It is also mentioned in the Will that the testator bequeathed all his movable, immovable property and even future assets if any acquired by him including House No. 232, situated at village khureji khas, Shahdara, in new lyalpur colony, Delhi (suit property) to his

youngest son (husband of defendant no.1). No other than suit property, is specifically mentioned in the Will. During cross-examination DW1 stated “At that time my father-in-law had only the suit property in his name and no other property.”

- iii. Testator bequeathed all his properties to one son to the exclusion of other three sons without specifically mentioned as to what has been provided to them and noted the same in the Will in exact words:- *“I may add here that all my other sons namely Shri Sat Pal Bhatia, Shri Subhash Chander Bhatia and Shri Baldev Raj Bhatia are well settled and well provided for and are living separately from me and therefore, I have in sound mind without any pressure and/or coercion or undue influence made my youngest son Shri Kailash Chander Bhatia, who is looking after his parents well in their old age to be the sole beneficiary/legally to the exclusive of all other legal heirs of my property.”* This fact creates suspicion in the mind of this court. During the cross-examination DW1 has stated that she does not have any documentary proof regarding giving the fund by the testator to other sons to run their own separate business. DW1 also affirmed the suggestion put by plaintiffs counsel that she does not have any documentary proof regarding payments to other sons to purchase their own property. Mere averments are not sufficient to prove that testator during his lifetime had provided the funds to his other sons to run their business or to purchase their own property. Furthermore, the propounder of the Will has not brought a single documentary proof or oral evidence to substantiate her plea as regards to providing the funds by the testator to his sons. The propounder of the Will could have produced any proof of income source of testator at the relevant time, or the address of properties purchased by other sons from the funds given by testator to them, to prove her averments and to remove the doubt, in absence thereof it

can safely be said that the propounder of the Will has not been able to remove the suspicion regarding the exclusion of other three sons from the bequest of Will.

- iv. The testator has put his signature in will in urdu, however the contents of the Will is in English-language. During the whole trial, it remained unproved that who had translated the contents of Will to the testator or whether the testator had knowledge of English-language. It casts a doubt in the mind of this court and the propounder of Will/defendant no.1 has not been able to remove this suspicion.
- v. The propounder of Will has examined the scribe of the Will (i.e. DW4) , but it has not come in his evidence that at whose instance he scribed the Will. It has also not come in his evidence, whether he knew the testator and other attesting witness prior to execution of Will, or whether he checked their identity cards to identify them at the time of execution of Will. However, DW4 in his cross-examination admitted that “I did not check the identity of executant of the Will namely Shri Hans Raj Bhatia. It is also correct that there is no number of any document regarding identity proof of Shri Hans Raj Bhatia in the above said Will” and he also affirmed the suggestion that the complete address of another witness Shri Ram singh is not mentioned in the Will. (vol. only Ghondli is mentioned). In such circumstances, DW4 can claim that one person signed as a testator and another person signed as an attesting witness on the Will in his presence, but he is unable to prove that the person who executed the Will on 27th April 1983 in his presence was the deceased father of plaintiff.
- vi. On perusal of Will it is clear that the particulars as regards to paternity and address of both the witnesses are not clearly mentioned in the Will. Furthermore, despite the failure of DW4 who

is claiming having scribed the Will and witnessed the same, to prove the duly execution of Will and validity of Will as per the requirements of provisions of law under section 68 of Indian evidence act 1872, the propounder of the Will/ defendant no.1 has not put any effort to call the second attesting witness namely Shri Ram Singh.

- vii. Apart from that, learned counsel for the plaintiff has drawn attention of this court to the cross-examination of DW1, wherein she has stated that “my father-in-law used to sign in urdu, as I had seen him to sign. I never seen my father-in-law signing in any document but he used to sign in a book of poems.” Hence it is clear that she had enough opportunity to produce admitted signature of her father-in-law for comparing with his signature in the Will. In absence thereof the signature of testator in the Will had remained unproved. This fact raises a suspicion in the mind of this court as to whether the signature on Ex-DW1/1 was really that of the testator.
- viii. DW3 was examined to show that the Will dated 27 April 1983 is a registered document. For this I should refer a recent case titled as **Dhani Ram (died) through LRS and others versus Shiv Singh, 2023 LiveLaw(SC) 862**, wherein the Hon’ble Apex court held that mere registration of Will would not sanctify the Will by attaching to it an irrebuttable presumption of genuineness, it has to be proved in accordance with section 68 of Indian evidence act and section 63 of Indian succession act.
- ix. It is pertinent to note that the date of execution of will is 27 April 1983. Admittedly the testator died in the year 1984, but the propounder of Will has not proved by any documentary proof or by any independent oral witness that the beneficiary of Will namely late Shri Kailash Chander Bhatia disclosed the contents of the Will to the other LRS of testator. It was the first time when the propounder of

Will/ Lrs of beneficiary in Will placed it on record along with their written statement in the present case in the year 2014 after more than 30 years of death of testator. Moreover, DW1 has deposed in her cross-examination that first time she came to the knowledge in the year 2013 through her husband regarding the Will dated 27 April 1983 executed by her father-in-law Shri Hansraj Bhatia. It clearly shows that she was not disclosed by her husband as regards to the existence of Will in his favour till the year 2013 and till then she was under the impression that all the LRs of Late Sh. Hansraj Bhatia (her husband , plaintiff, defendant No.5 and father of defendant no.6 and 7) are co-sharers and co-owners in the suit property. Meaning thereby, the will did not see the light of the day for long.

In view of the above said discussion, it is held that the defendants/ propounder of Will have failed to prove the Will (Ex DW1/1) in accordance with law in as much as they have not removed the suspicious circumstances, surrounding the execution of the Will. Therefore this issue is decided in favour of plaintiff and against the defendants.

ISSUE No.1 & 2:

18. *“Whether the plaintiff is entitled for preliminary decree of partition holding $\frac{1}{4}^{th}$ share of the plaintiff in the suit property? OPP.*

Whether in pursuance to passing of the preliminary decree, plaintiff is entitled for a final decree for partition thereby directing division of suit property? OPP”

The onus of proving these issue was upon the plaintiff. It is an admitted fact that the suit property is self-acquired property of the deceased father of plaintiff and father-in-law of defendant no.1. It is also an admitted fact that the deceased father of plaintiff had left four sons behind him namely Shri Subhash Chandra Bhatia (plaintiff), Shri Kailash

Chandra Bhatia (husband of the defendant no.1), Shri Satpal Bhatia (Defendant No.5) and Shri Baldev Raj Bhatia (father of Defendant Nos. 6 and 7). Therefore, the plaintiff is claiming one fourth share in the suit property. In view of the findings made above in issue no. 3, it has already been held that the defendants have not been able to prove that due execution of the Will and validity of Will. Plaintiff is successful in establishing his claim on record. Since Shri Subhash Chandra Bhatia (plaintiff), Shri Kailash Chandra Bhatia (husband of the defendant no.1), Shri Satpal Bhatia (Defendant No.5) and Shri Baldev Raj Bhatia (father of Defendant Nos. 6 and 7) who are/were the children of deceased father/owner of suit property, all have inherited the suit property jointly and equally as the joint-owners of the same, therefore, plaintiff , defendants No. 1to4 (one part), defendant no.5 and defendant no.6&7(one part) are entitled to equal 1/4th share in the suit property. Hence it is held that the plaintiff is entitled to one fourth share in the suit property bearing no. 232, New Layalpur, Delhi-110051 measuring 200 sq. yards. Thus, these issues are decided accordingly in favour of the plaintiff and against the defendants. Parties are also directed to suggest ways and means by which suit property could be partitioned by metes and bounds as per share specified in the preliminary decree.

RELIEF

19. In view of above findings, hence the plaintiff, defendants No. 1 to 4 (one part), defendant no.5 and defendant no. 6 & 7 (one part) are declared joint-owners/joint-sharers of equal 1/4th of the suit property and plaintiff and defendants are entitled to partition with equal 1/4th share each in the suit property and a decree of permanent injunction is also hereby passed directing the parties to maintain status quo in respect of the suit property or any portion thereof or from creating any third party interest till the time partition is made by metes and bounds. Let a preliminary decree be passed accordingly, in above terms.

20. Decree Sheet shall be prepared only when the plaintiff pays the requisite/deficient court fees, if any. Preliminary decree sheet be prepared accordingly. There is no order as to costs.

Put up on 07.03.2024 for partition by metes and bounds.

**Announced in the open
Court on 30.01.2024**

**(POOJA JAIN)
Additional District Judge-03
(East)/KKD/Delhi/30.01.2024**