

IN THE COURT OF SH. SHIV KUMAR,  
DISTRICT JUDGE-02 (WEST DISTRICT),  
TIS HAZARI COURTS: DELHI

PC No. 24/2021

CNR No. DLWT01-003471-2021

DLWT010034712021



Parminder Pal Singh  
S/o late Vasdev Singh  
R/o 17/181, Ground floor,  
Subhash Nagar,  
New Delhi-110027

.....Petitioner

Versus

1. State (Govt of N.C.T. of Delhi)  
Through the Chief Secretary,  
Delhi Secretariat

..... Respondent no. 1

2. Gurinder Singh  
S/o Late Vasudev Singh,  
R/o 17/181, First Floor,  
Subhash Nagar,  
New Delhi – 110027

.....Respondent no. 2

3. Sh. Ravinder Kaur Sethi,  
W/o Smt. Manjeet Singh Sethi,  
R/o B-103, II nd Floor  
Fateh Nagar, New Delhi –110027

.....Respondent no. 3

**PETITION UNDER SECTION 276 OF THE INDIAN SUCCESSION ACT FOR GRANT OF PROBATE OF REGISTERED WILL DT. 04.12.2012 EXECUTED BY LATE VASDEV SINGH, S/O LATE SH. PRADHAN SINGH R/O 17/181 SUBHASH NAGAR, NEW DELHI-110027 IN RESPECT OF BUILT UP PROPERTY GROUND FLOOR, SECOND FLOOR WITH OUT ROOF RIGHT BUILT ON LAND MEASURING 100 SQ. YDS EACH AND ALSO ROOF RIGHTS OF HALF ROOF IN THE THIRD FLOOR.**

Date of institution of the case : 20.04.2021  
Date of for judgment reserved : 24.03.2026  
Date of pronouncement of judgment : 28.03.2026

**JUDGMENT**

1. Vide this judgment, I shall decide the petition filed by the petitioner, under Section 276 of the Indian Succession Act whereby which the petitioner has sought grant of Probate of will dated 04.12.2012, executed by Late Sh. Vasdev Singh.

**CASE OF THE PETITIONER, AS PER HIS PETITION**

2. It is averred in the petition that the respondent no. 2 is the brother of petitioner and respondent no. 3 is the sister of the petitioner.

3. It is further averred that the property bearing address 17/181, Ground Floor, and second floor without roof rights and half roof rights, Subhash Nagar, New Delhi – 110027, was owned by Late Vasdev Singh vide Conveyance Deed.

4. It is further averred that the late Sh. Vasdev Singh was father of the petitioner was the sole and absolute owner and in possession of built up property bearing no. 17/181 Ground Floor and Second Floor without Roof Rights, Subhash Nagar New Delhi – 110027, built on Land Measuring 100 Sq. Yds and half roof rights, in the Third Floor. ( hereinafter to be referred as property in question).

5. It is further averred that the father of the petitioner namely Late Vasdev Singh S/o Late Pradhan Singh died on 24.03.2016 and mother of the petitioner died on 05.02.2015, leaving behind the following legal heirs.

1. Parminder Pal Singh ( Petitioner) Son
2. Gurinder Singh (Respondent no. 2) Son
3. Ravinder Kaur (Respondent no. 3) Daughter

6. It is further averred that that Late Vasdev Singh during his life out of love and affection had executed a registered will dated 04.12.2012 in the favour of petitioner and Respondent no. 2, thereby bequeathing 17/181 Ground Floor, and Second Floor without roof rights Subhash Nagar, New Delhi – 110027, built on Land measuring 100 Sq. Yds and Roof rights of half roof in favour of Petitioner and 17/181 First Floor and Third Floor without roof rights and Roof Rights of Half Roof in favour of Respondent no. 2. It is further averred that it is pertinent to mention here that the roof of the Third Floor will remain common for both of petitioner and respondent no. 2 and they shall have equal rights (i.e. 50:50) in the roof of said property.

7. It is further averred that that aforesaid will is registered in office of SR-II Janakpuri, New Delhi vide Reg. No. 3081 in Book no. 3 vol 8022, dated 04.12.2012.

8. It is further averred that it is clearly mentioned in the Will that “at present said building constructed as Ground Floor, First Floor and one room on Second Floor and my sons shall have full rights to complete and construct the second and third floor on the said property with their own cost and expenses as per their share and both sons also cooperate to each other during construction ad in future.

9. It is further averred that by virtue of the said registered will dated 04.12.2012 late Sh. Vasdev Singh has bequeathed 17/181 Ground Floor, and Second Floor without roof rights, Subhash Nagar, New Delhi – 110027, Built on Land measuring 100 Sq. Yds and Roof Rights of Half Roof of Third Floor in favour of the petitioner. Thus by virtue of the aforesaid registered will, the petitioner has become the owner of the said property.

10. It is further averred that there is no impediment to grant of probate of the registered will in the respect of the aforesaid estate of the deceased.

11. It is further averred that the respondent no. 2 has also filed a suit for partition bearing Civ DJ/928/2019, title Gurvinder Singh Vs Parminder Pal Singh which is pending before the Court of Sh. Prashant Sharma, Ld. ADJ, West, Tis Hazari Court, Delhi.

12. It is further averred that the property in question, of which the probate is sought, is situated at Subhash Nagar, New Delhi, the registered Will was executed and registered in Delhi, this Hon'ble Court has jurisdiction to entertain and try the present petition for grant of the relief prayed for.

13. It is further averred that the formal court fee of Rs. 20/- is being paid by the petitioner. However, the petitioner undertakes to pay further court fee as per the directions of this Hon'ble Court.

14. It is further averred that no other similar petition has been filed by or on behalf of the petitioner either in this Hon'ble Court or before any other court besides the present petition.

15. Notice of petition was issued to respondent no. 1, respondent no. 2 and respondent no. 3. Citation for general public has also published in Newspaper "The Statesman" dated 25.04.2022. Citation has also affixed at the notice board of court on 24.04.2022.

16. Respondent no. 3 has been served on 21.04.2022 but neither respondent no. 3 has appeared nor has filed any objections in the present case. Right of respondent no. 3 to file objection was closed vide order dated 12.01.2023. Respondent no. 1 is State and objections has also not been filed on behalf of State. In the present case, objections has been filed only on behalf of respondent no. 2.

17. Valuation report has been filed on behalf of Teshildar/Executive Magistrate, Rajouri Garden, in respect of property bearing No. 17/181, G.F. 2<sup>nd</sup> floor, 3<sup>rd</sup> half roof right, Subhash Nagar, New Delhi-110027. As per valuation report, the value of the above said property is Rs.21,99,474/- ( Rupees Twenty One Lac Ninety Nine Thousand Four Hundred Seventy Four only).

**CASE OF RESPONDENT NO.2 AS PER HIS**  
**REPLY/OBJECTIONS.**

18. Respondent no. 2 has filed reply/objections to the present petition by taking preliminary objections that the present petition is not maintainable as petitioner has not approached this court with clean hands and has concealed the material facts.

19. It is further contended that the present petition has been filed by the petitioner without accruing any cause of action in his favour and against the respondent, hence the present petition is liable to be rejected in view of provision of order VII rule 11 of CPC.

20. It is further contended that the present petition is not maintainable either under equity or under the law of the land.

21. It is further averred that father of parties namely Sh. Vasdev Singh was the sole and absolute owner of the built-up property bearing no. 17/181, measuring 100 sq. yards, Subhash Nagar, New Delhi-110027. The deceased father of the parties

signed and executed a Will dated 04.12.2012 duly registered vide registration no. 3081, Book No. III, Volume No. 8022 on pages 81 to 83 on 04.12.2012 thereby bequeathing said property in favour of his sons i.e. petitioner and respondent no. 2 in the following manner:

(a) Entire ground floor and second floor without roof right and half right in roof of third floor forming part of property no. 17/181, 100 Sq. Yds, Subhash Nagar, New Delhi-110027 alongwith proportionate rights in land underneath and common passage in favour of the petitioner.

(b) Entire first floor and third floor without roof right and half right in roof of third floor forming part of property no. 17/181, 100 sq. yds, Subhash Nagar, New Delhi-110027 alongwith proportionate rights in land underneath and common passage in favour of the respondent no. 2.

22. It is further contended that as only ground and first floor were fully constructed by deceased father of parties and there was only one room at the second floor, hence, it was mentioned in the will that sons shall fully construct their respective floor, i.e. second floor and third floor from their own funds and thereafter both the sons will be having equal share in the roof of third floor. The deceased father of the parties had not given anything to the respondent no. 3.

23. It is further contended that even from contents of Will dated 04.12.2012, present petition and from the current structural

status of the property in question, second floor and third floor are not in existence and both sons are in possession of one floor each i.e. ground and first floor while the second floor is in joint possession of the parties.

24. It is further contended that in the present petition, the petitioner has claimed that probate be issued in respect of the Will in question regarding the respective share of the parties as per will but same cannot be granted because there is no full construction of second floor. If the probate is granted in the current structural condition of the property, then petitioner will have exclusive ownership in second floor and will not construct the same and thus, respondent no. 2 would never get his third floor and there would be great injustice to the respondent, hence, the present petition is liable to be dismissed on this ground alone.

25. It is further contended that the present petition of the petitioner is not maintainable in view of the settlement arrived between the petitioner and respondent no. 2 in civil suit bearing no. 928/2019 titled as "Gurinder Singh Vs Parminder Pal Singh & Ors. whereby it was agreed that petitioner is owner of entire ground floor and respondent no. 2 is owner of entire first floor and roof of first floor i.e. second floor consisting of one room will be common for both the parties in equal proportionate. It is further contended that on the basis of said settlement of the parties the above said civil suit bearing no. 928/2019 was decreed by the Hon'ble court of Sh. Prashant Sharma, Ld. ADJ-05 West, Tis Hazari Courts, Delhi vide its judgment dated

09.04.2021. But within fortnight of that statement and decree, the petitioner has filed the present petition for obtaining probate, acting contrary to settlement, hence the present petition is liable to be dismissed.

26. It is further contended that the probate cannot be granted either in favour of the petitioner or in favour of the respondent no. 2 until and unless the property in question is constructed upto third floor with the joint funds of both the parties. First of all, petitioner should be directed to construct the entire second floor from his own funds within the time frame and hand over the possession of roof of second floor for construction of the entire third floor and thereafter both the parties would be having equal share in the roof of third floor as per true spirit of Will dated 04.12.2012. It is further contended that if the probate is granted in favour of the petitioner in respect of first and second floor, then respondent no. 2 would never be able to construct third floor as per will, which would result into multiplicity of litigation.

27. It is further contended that the present petition is not maintainable in the fact and law as same is based on wrong, incorrect, false and baseless facts having no iota of truth.

28. The petitioner has not filed replication of the objections of respondent no. 2 and his right to file replication was closed on 12.01.2023.

## ISSUES

29. On the basis of the pleadings, the following issues have been framed vide order dated 12.01.2023.

*1. Whether late Mr. Vasudev Singh, prepared a Will on 04.12.2012 in sound disposing mind ? OPP.*

*2. Whether the petitioner is entitled to letter of administration of the above said Will being the beneficiary there under ? OPP.*

*3. Relief.*

30. Parties were directed to adduce evidence.

## EVIDENCE ON BEHALF OF PETITIONER

31. The Petitioner in support of his case has examined two witnesses. i.e.

- 1) PW-1: Sh. Parminder Pal Singh (Petitioner).
- 2) PW-2: Sh. Dalip Kumar (one of the attesting witness of the Will).

32. Sh. Parminder Pal Singh /Petitioner appeared in the witness box as PW-1 and tendered his affidavit in evidence as Ex PW-1/A. In his affidavit, PW-1 reiterated and reaffirmed the averments made by him in his petition and relied upon the documents, which are as follows:

- (i) Copy of his Aadhar Card as Ex PW-1/1 ( OSR).
- (ii) Death certificate of late Vasudev Singh as Ex. PW-1/2.
- (iii) Death certificate of Ms Surjeet Kaur as Ex. PW-1/3.
- (iv) Registered Will dated 04.12.2012.

33. PW-1 has been duly cross-examined by Id. counsel for respondent no. 2.

34. Sh. Dalip Kumar, one of the attesting witnesses appeared in the witness box as PW-2 and tendered his evidence by way of affidavit Ex. PW-2/A. He exhibited copy of his Aadhar Card as Ex. C-1 ( OSR). PW-2 further identified the thumb impression of testator Sh. Vasudev Singh at point A, his signatures at point B and signatures of other attesting witness late Sh. Rajeev Anand at point C. He deposed that the Will is also annexed the photograph of the testator at point D. He further deposed that the testator, he and the other attesting witness signed the Will at the same time in the presence of the testator.

35. PW-2 has also cross-examined by Id. counsel for the respondent.

36. On 29.04.2025, Id counsel for the petitioner closed the evidence of the petitioner by giving statement in court.

### **EVIDENCE ON BEHALF OF THE RESPONDENT**

#### **No. 2**

37. Respondent No. 2 has only examined himself in his evidence.

38. RW1: Sh. Gurinder Singh has appeared in the witness box and he tendered his evidence by way of an affidavit Ex. RW1/A and reiterated the objections taken in his written statement.

39. In the cross-examination, RW-1 admitted that his father had executed a Will dated 04.12.2012 and the said Will has been executed in his favour and his brother/Sh. Parminder Pal Singh (petitioner).

40. On 03.02.2026, as per statement of the respondent no. 2, RE was closed.

### FINAL ARGUMENTS

41. I have heard the final arguments from both sides and have gone through the entire case file including pleadings and testimonies of the witnesses.

### CONTENTIONS OF THE PETITIONER.

42. Ld counsel for the petitioner has argued that the petitioner has duly proved the Will in question by examining one of the attesting witness of the Will in question i.e. Sh. Dalip Kumar /PW-2. Ld. counsel for the petitioner further argued that PW-2 has identified his signatures as well as thumb impression of deceased and signatures of other attesting witness late Sh. Rajeev Anand on the Will in question. She further argued that PW-2 has proved that the testator had put his thumb impression on the Will voluntarily, after fully understanding the contents of the Will and the testator was in sound disposing state of mind at the time of execution of the Will.

43. Ld counsel for the petitioner further argued that respondent no. 2 has admitted the execution of Will in question by his father. Ld. counsel for the petitioner further argued that respondent no. 2 also admitted that the Will executed by his father is in his favour as well as in favour of petitioner.

44. Ld counsel for the petitioner further argued that the petitioner has proved that the Will in question has been executed by complying the requirements mentioned in section 63 Indian Succession Act and has proved the Will as per section 68 of Indian Evidence Act.

45. Ld counsel for the petitioner further argued that there is no suspicious circumstances surrounding the execution of the Will and the Will in question is legal, valid and genuine Will of the deceased.

#### *CONTENTIONS OF THE RESPONDENT*

46. Ld. counsel for respondent no. 2 has argued that petitioner has not attached site plan with the petition, so petitioner is liable to be dismissed.

47. Ld. counsel for respondent no. 2 has further argued that petitioner is in possession of ground floor and respondent no. 2 is in possession of Ist floor of the property in question. He further argued that it is impossible to give possession of un-constructed portion of property in question as per Will in question.

48. Ld. counsel for respondent no. 2 has further argued that partition suit of the property in question has been decided between the parties by way of settlement. He further argued that by way of settlement, it is agreed by the petitioner that petitioner is the owner of ground floor and respondent no. 2 is the owner of 1st floor. He further argued that the petitioner has also agreed in the partition suit that the roof of first floor i.e. second floor consisting one room will be common for both the parties in equal proportionate. He further argued that the partition suit has been decided vide judgment dated 09.04.2021. He further argued that the petitioner cannot back out from the settlement.

49. Ld. counsel for respondent no. 2 has further argued that in the present petition, the petitioner has claimed that probate be issued in respect of the Will in question regarding the respective share of the parties as per will but same cannot be granted because there is no full construction of second floor. He further argued that if the probate is granted in the current structural condition of the property, then petitioner will have exclusive ownership in second floor and will not construct the same and thus, respondent no. 2 would never get his third floor and there would be great injustice to the respondent, hence, the present petition is liable to be dismissed on this ground alone.

**ISSUE-WISE FINDINGS**  
**Findings on issue no. 1**

*1. Whether late Mr. Vasudev Singh, prepared a Will on 04.12.2012 in sound disposing mind ? OPP.*

50. Onus to prove issue no. 1 is upon the petitioner. In order to prove issue no. 1, petitioner has examined two witnesses: PW-1: Sh. Parminder Pal Singh (Petitioner) and PW-2: Sh. Dalip Singh (one of the attesting witness of the Will).

51. Before deciding the contentions of the parties, I would like to discuss various statutory provisions and relevant judgments involved in the present case for deciding the issue no. 1.

52. The expression “Will” is defined by Section 2(h) of Indian Succession Act, 1925 to mean the legal declaration of “the intention” of a testator with respect to his property “which he desires to be carried into effect after his death”.

53. Section 59 of Indian Succession Act declares that every person(not being a minor) “of sound mind” may dispose of his property by Will.

54. The execution of an unprivileged Will, as the case at hand relates to, is governed by Section 63 of the Indian Succession Act, 1925, which reads thus:-

“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 directions.*

*(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 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”.*

55. The provisions contained in Section 68 of the Indian Evidence Act, 1872 are also to be kept in mind in such type of matters.

*“Section 68 of Indian Evidence Act states that 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 Indian Registration Act 1908 unless its execution by the person by whom it purported to have been executed is specifically denied.”*

56. The principles for proving the Will have been well settled, in catena of judgments by Hon’ble Supreme Court of India as well as by Hon’ble High Court of Delhi. Some of the judgments have been mentioned below to appreciate the law, applicable on the facts of the present case.

57. In a case titled as **H. Venkatachala Iyengar v. B.N. Thimmajamma** [**H. Venkatachala Iyengar v. B.N. Thimmajamma**, AIR 1959 SC 443, Hon'ble Apex Court has laid down the following propositions:

*(1) Stated generally, 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 in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.*

*(2) Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, 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.*

*(3) Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.*

*(4) Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. 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 and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was*

*made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.*

*(5) It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.*

*(6) If a caveator alleges fraud, undue influence, coercion, etc. 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 raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."*

58. In a case titled "**Shashi Kumar Banerjee vs. Subodh Kumar Banerjee**, AIR 1964, SC 529, a Constitution Bench of the Hon'ble Supreme Court of India, the Hon'ble Supreme court has held as follows:-

*"4.... The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by S.63 of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances*

*surrounding the execution of the will, proof of testamentary capacity and the signatures of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case the Court would naturally expect that all legitimate suspicious should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the Court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations...*

59. In a case titled “**Hari Singh & Anr. Vs State & Anr**” 176 (2011) DLT 199 (DB), the Hon’ble High Court has relied upon its own judgement given in **FAO No. 874/2003 dated 21.11.2007 titled Jagdish Lal Bhatia vs Madan Lal Bhatia**, which dealt with the legal burden of proof when a Will is propounded and also spelt as to what would constitute suspicious circumstances and what form of affirmative proof should be sought by the court to satisfy the judicial conscience that the document propounded is the last, legal and valid custom of the testator. These are as

under:

*I. The legal burden to prove due execution always lies upon the person propounding a will. The propounder must satisfy the judicial conscience of the court that the instrument so propounded is last will of a free and capable testator.*

*II. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the will in the manner contemplated by the law. The contestant opposing the will may bring material on record meeting such prima facie in which event the onus would shift back on the propounder to satisfy the Court affirmatively that the testator did know well the contents of the will and in sound disposing capacity executed the same. (see the decision of the Supreme Court in Madhukar D. Shende v Tarabai Aba Shedge, AIR 2002 SC 637).*

*III. No specific standard of proof can be enunciated which must be applicable to all the cases. Every case depends upon its circumstances. Apart from other proof, conduct of parties is very material and has considerable bearing on evidence as to the genuineness of will which is propounded. Courts have to be vigilant and zealous in examining evidence. Rules relating to proof of wills are not rules of laws but are rules of prudence.*

*IV. Expanding on the care and caution to be adopted by the courts, and presumptions to be raised, in the decision reported as (1864) 3 Sw& Tr. 431 In The Goods of Geale, it was opined that where a person is illiterate or semi literate or the will is in a language not spoken or understood by the executor, the court would require evidence to affirmatively establish that the testator understood and approved all the contents of the will.*

*V. One form of affirmative proof is to establish that the will was read over by, or to, the testator when he executed it. If a testator merely casts his eye over the will, this may not*

*be sufficient.*

*VI. Courts have to evaluate evidence pertaining to the circumstances under which the will was prepared. If a will is prepared and executed under circumstances which raise a well grounded suspicion that the executor did not express his mind under the will, probate would not be granted unless that suspicion is removed.*

*VII. A word of caution. Circumstances can only raise a suspicion if they are circumstance attending, or at least relevant to the preparation and execution of the will itself.*

*VIII. Another point that has to be considered is about the improbability in the manner in which the instrument is scripted. Instance of suspicious circumstances would be alleged signatures of testator being shaky and doubtful, condition of the testator's mind being feeble and debilitated, bequest being unnatural, improbable and unfair.*

*IX. Suspicious circumstances are a presumption to hold against the will. Greater is the suspicion more heavy would be the onus to be discharged by he who propounds the will.*

*X. A will is normally executed by a person where he intends to alter the rule of succession or where he desires a particular form of inheritance and to that extent, nature of bequest is not of much substance to invalidate a will, but consistent view taken by the courts is that this could be treated as a suspicious circumstance. What weightage has to be attached to this suspicion would depend upon case to case.*

*XI. Suspicion being a presumptive evidence, is a weak evidence and can be dispelled.*

60. In a case titled **Inder Bala Bose vs Maninder Chandra Bose AIR 1982 SC 133**, the Hon'ble Supreme Court has held that "any and every circumstance is not a suspicious circumstance. A

circumstance would be suspicious when it is not normal or is not normally in a normal situation or is not expected from a normal person."

61. The Hon'ble Apex Court in a case titled Krishna Kumar Birla vs Rajendra Singh Lodha & Ors on 31 March, 2008 has held as follows:

*"The jurisdiction of the Probate Court is limited being confined only to consider the genuineness of the Will."*

*"A question of title arising under the Act cannot be gone into the proceedings. Construction of a Will relating to the right, title and interest of any other person is beyond the domain of the Probate Court."*

62. **In a case titled as Meena Pradhan & Ors. vs Kamla Pradhan & Anr. In Civil Appeal No. 3351 of 2014, decided on 21 September 2023,** the Hon'ble Apex Court has deduced the principles to prove the Will and the same are as under; -

*i This 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 fulfill 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 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 suspicious 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; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;*

*x. 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'. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstances raising suspicion legitimate in nature would qualify as a suspicious circumstances 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.*

63. It is settled proposition of law that onus is always on the propounder of the Will to prove the genuineness and due execution of the Will and to remove all the suspicious circumstances surrounding the execution of the Will.

64. In the light of Legal principles as carved out in catena of Judgments by the superior courts and some of them as discussed above, it is obligatory for propounder of the Will to prove the following essentials:

- (i) That the Will in question is a legal declaration of the intention of the testator:

(ii) That the testator while executing the Will was in the sound and disposing state of mind:

(iii) That the testator had executed the Will of his own free will meaning thereby that he was a free agent when he executed the Will:

(iv) That the petitioner has also to remove all the suspicious circumstances, if any, surrounding the Will to the satisfaction of the conscious of the Court:

(v) For proving the Will, one attesting witness of the Will must be examined in the Court.

65. PW-2/ Sh. Dalip Kumar, one of the attesting witness of the Will in question has been examined in the court. PW-2 has deposed in his examination in chief by way of affidavit that late Sh. Vasdev Singh executed his last registered Will dated 4.12.2012 in his presence. PW-2 further deposed that at the time of execution and signing of Will by late Sh. Vasdev Singh, he was present.

66. PW-2 further deposed that he alongwith other attesting witness namely late Sh. Rajeev Anand, signed the Will in presence of late Sh. Vasdev Singh. PW-2 further deposed that all of them were present at the same time and the execution of Will was completed in their presence. PW-2 further deposed that the particulars mentioned in the Will represent the true and genuine wishes of late Sh. Vasdev Singh as expressed by him during his life time.

67. During examination in chief, original Will Ex. PW-1/4 was shown to PW-2. After seeing the Will, PW-2 identified his

signatures at point B, signatures of other attesting witness late Sh. Rajeev Anand at point C and thumb impression of testator late Sh. Vasdev Singh at point A.

68. During cross-examination, PW-2 deposed that he was called for giving witness by late Sh. Vasdev and Sh. Bhagat Singh through phone. PW-2 further deposed that just 2-3 days of the execution of the Will, Sh. Vasdev and Sh. Bhagat Singh met him and told him that Sh. Vasdev wanted to execute his Will in favour of his children and he wanted PW-2 to become witness in the Will. PW-2 further deposed that he had signed the Will as a witness in the office of Sub-Registrar. He further deposed that he does not know the exact contents of the Will as he was only the witness.

69. Petitioner/PW-1 has deposed in his examination in chief that his father late Sh. Vasdev Singh died on 24.03.2016 and his mother died on 15.05.2015 leaving behind three legal heirs i.e. petitioner, respondent no. 2 and respondent no. 3. PW-1 has proved the death of late Sh. Vasdev Singh vide death certificate Ex. PW-1/2 and death of his mother late Smt. Surjeet Kaur vide death certificate Ex. PW-1/3.

70. PW-1 further deposed that the Will dated 4.12.2012 was executed by his father in favour of petitioner and respondent no. 2. During cross-examination PW-1 deposed that property in question was constructed at ground floor, first floor and there is one room at second floor.

71. PW-1 further deposed that there is no mentioning regarding expenses to be incurred in constructing second and third floor over the property in question. PW-1 has denied the suggestion that he alongwith attesting witnesses went for execution of the Will in question.

72. Respondent no. 2/RW-1 has deposed in his examination in chief by way of affidavit that the deceased father of the parties signed and executed the Will dated 4.12.2012 duly registered thereby bequeathing the property in question in favour of his sons i.e. petitioner and respondent no. 2.

73. RW-1 further deposed that from the contents of the Will, present petition and from the current structural status of the property in question, second floor and third floor are not in existence and both sons are in possession of one floor each i.e. ground floor and first floor and whereas the second floor is in joint possession of the parties.

74. RW-1 further deposed that probate cannot be issued to the petitioner as there is no full construction of second floor. RW-1 further deposed that if the probate is granted in the current structural condition of the property, then the petitioner will have exclusive ownership over the second floor and will not construct the same and thus respondent no. 2 will never get his third floor.

75. RW-1 further deposed that as per settlement took place in civil suit bearing no. 928/2019, titled Gurinder Singh Vs Parminder Pal Singh & Ors., it was agreed between the parties

that petitioner is the owner of entire ground floor and respondent no. 2 is the owner of entire first floor and roof of first floor i.e. second floor consisting of one room, will be common for both the parties in equal proportion.

76. RW-1 further deposed that probate cannot be granted until property in question is constructed up to third floor with the joint funds of both the parties.

77. During cross-examination RW-1 has admitted that his father had executed a Will dated 4.12.2012. RW-1 further admitted that the said Will has been executed in favour of him and his brother/petitioner.

78. Respondent no. 2 has admitted the execution of Will in question by late Sh. Vasdev Singh ( father of petitioner and respondent no. 2) in his examination in chief by way of affidavit as well as in his cross-examination.

79. The Will in question is a registered Will. Hon'ble High Court of Delhi in a case titled Smt. Veena Khanna Vs State & Anr.(Supra) has held as follows:

*“61. The Will dated 05.06.1979 Ex. PW1/2 was duly registered by the office of the Sub-Registrar-District I-Delhi on 05.06.1979. The factum of registration of the Will in the present case creates a presumption that a registered document is validly executed as held in the case of Prem Singh & Ors. Vs Birbal & Ors., 2006 (5) SCC 253. However, in the case of Rani Purnima Debi and Anr. Vs Kumar Khagendra Narayan Deb and Anr., AIR 1962 SC 567, the Apex Court*

*observed that mere registration in itself is not sufficient to dispel all suspicion which exist without submitting the evidence to a close examination, though the factum of registration is an important circumstances in favour of the Will being genuine if cogent evidence is led in this regard to its registration”.*

80. In the present case, Will in question is a registered Will. Hence, in view of the above said judgment, the fact of registration of Will is also an important circumstances regarding genuineness of the Will in question.

81. Respondent no. 2 has not proved or pointed out any suspicious circumstances surrounding the execution of Will in question.

82. PW-2/Sh. Dalip Kumar, one of the attesting witnesses, has proved that the Will in question was executed by late Sh. Vasdev Singh in his presence and in the presence of second attesting witness late Sh. Rajeev Anand and Will in question represented the true and genuine wishes of late Sh. Vasdev Singh. PW-2 has identified his signatures at point B and signatures of late Sh. Rajeev Anand at point C, on the Will Ex. PW-1/4. PW-2 has also identified thumb impression of late Sh. Vasdev Singh at point A, on Will Ex. PW-1/4.

83. The contention of respondent no. 2 that the petitioner has not filed site plan of property in question, so petition is liable to be dismissed is not valid contention. For seeking probate or letters of administration on the basis of Will, the petitioner, is

not required to file site plan of property in question under any provisions of Indian Succession Act, 1925. So the above contention stands rejected.

84. The second contention of respondent no. 2 is that partition suit of the property in question has been decided between the parties by way of settlement and it is agreed by the petitioner that petitioner is the owner of ground floor and respondent no. 2 is the owner of Ist floor. It is further argued that the petitioner has also agreed in the partition suit that the roof of first floor i.e. second floor consisting one room will be common for both the parties in equal proportionate. It is further argued that the partition suit has been decided vide judgment dated 09.04.2021. It is further argued that the petitioner cannot back out from the settlement.

85. The third contention of respondent no. 2 is that in the present petition, the petitioner has claimed that probate be issued in respect of the Will in question regarding the respective share of the parties as per will but same cannot be granted because there is no full construction of second floor. It is further argued that if the probate is granted in the current structural condition of the property, then petitioner will have exclusive ownership in second floor and will not construct the same and thus, respondent no. 2 would never get his third floor and there would be great injustice to the respondent, hence, the present petition is liable to be dismissed on this ground alone.

**86. *The Hon'ble Apex Court in a case titled Krishna Kumar Birla vs Rajendra Singh Lodha & Ors, 2008 SCC 4300, has held as under :***

*57. "The jurisdiction of the Probate Court is limited being confined only to consider the genuineness of the Will."*

*A question of title arising under the Act cannot be gone into the proceedings. Construction of a Will relating to the right, title and interest of any other person is beyond the domain of the Probate Court."*

*66. This court, thus categorically opined that while granting a probate, the court would not decide any dispute with regard to title. A separate suit would be maintainable therefore. If Probate is granted, they have a remedy in terms of section 263 of the 1925 Act also.*

*67. In the recent judgment of Kanwarjit Singh Dhillon Vs Hardayal Singh Dhillon (2007) 11 SCC 357, (2007) 12 Scale 282, this court inter alia relying upon Chiranjilal Shrilal Goenka Vs Jasjeet Singh (1993) 2 SCC 507 and upon referring to a catena of decisions of the High Court and this Court, held that the probate Court does not decide any question of title or of the existence of the property itself.*

*68. In Basanti Devi Vs Ram Prakash Ram Prasad Jaiswal, (2008) 1 SCC 267, (2007) 12 Scale 542 it is stated :*

*"22(21). The probate Court, in disputably exercise a limited jurisdiction. It is more concerned with the question of title. But if the probate has been granted subject to compliance with the provisions of the Act, an application for revocation would also lie.*

**87. In a case titled Jose Paulo Coutinho Vs. Maria Luiza Valentine Pereira & Anr, 2019, SCC Online SC 1190, the Hon'ble Supreme Court of India has held as under:**

*32. We shall now deal with the issue "what is the*

*effect of the grant of probate of the Will of late JMP by the High Court of Bombay?” At the outset, we may say that the order granting probate has not been produced by any side though it is admitted by all sides that probate was granted and the appellants herein had notice of the probate case. Assuming that probate had been granted, what is the effect of the grant of probate on the laws of inheritance? Grant of probate has nothing to do with inheritance. The jurisdiction of a probate court is limited to decide whether the Will is genuine or not. The Will may be genuine but the grant of probate does not mean that the Will is valid even if it violates the laws of inheritance. To give an example, supposing a Hindu bequeathes his ancestral property by a Will and probate of the Will is granted, such grant of probate cannot adversely affect the rights of those members of the coparcenary who had a right in the property since birth. Similar is the case in Goa. The legitime is the right of the heirs by birth. When both the spouses are alive, they own half of the property. Mere grant of probate will not mean that the husband can Will away more than half of the property even if that be in his name.*

*33. This Court in Krishna Kumar Birla vs. Rajendra Singh Lodha<sup>12</sup> held as under:*

*“57. The 1925 Act in this case has nothing to do with the law of inheritance or succession which is otherwise governed by statutory laws or the custom, as the case may be. It makes detailed provisions as to how and in what manner an application for grant of probate is to be 12 (2008) 4 SCC 300 filed, considered and granted or refused. Rights and obligations of the parties as also the executors and administrators appointed by the court are laid down therein. Removal of the existing executors and administrators and appointment of subsequent executors are within the exclusive domain of the court. The jurisdiction of the Probate Court is limited being confined only to consider the genuineness of the will. A question of title arising under the Act cannot be gone into the (sic probate) proceedings. Construction of a will relating to the right, title and interest of any other person is beyond the domain of the Probate Court.” In view of the clearcut exposition of law in*

*the aforesaid case, we hold that grant of probate by the Bombay High Court did not in any manner affect the rights of inheritance of all the legal heirs of the deceased.*

*34. In view of the above discussion, we answer the question framed in Paragraph 1, holding that it will be the Portuguese Civil Code, 1867 as applicable in the State of Goa, which shall govern the rights of succession and inheritance even in respect of properties of a Goan domicile situated outside Goa, anywhere in India.*

88. It is settled law that the probate court has not to decide right, title & interest of the parties as well as of the deceased in the property, bequeathed by way of Will. While dealing with probate/letters of administration case, the court is concerned only with the question, as to whether, the document put forward before it, is the last genuine Will and testament of the deceased and it has been voluntarily executed by the testator and it is attested in accordance with the provisions of Law and whether at that time, the testator had sound disposing mind. The probate court has also to see whether there is any suspicious circumstances surrounding the execution of the Will and the said suspicions have been dispelled by the propounder of the Will. The question relating to the title of the parties as well as of the testator in the subject properties of Will, is alien to the probate jurisdiction of the court.

89. Respondent no. 2 has not filed on record copy of judgment dated 08.04.2021 and copy of settlement entered between him and petitioner in the partition suit. So, in the absence of copy of judgment and settlement on record, this court cannot pass any

comment on the said judgment and settlement passed/ entered between the parties in the partition suit. Moreover this court being a probate court has only to decide the legality and genuiness of Will in question.

90. In the present petition, this court being a probate court, has not to decide, as to how the beneficiaries of the Will in question will construct second floor and third floor upon the property in question. In the present petition, this court cannot give any direction to petitioner for construction of second floor on the property in question. The parties can seek appropriate civil remedies for enforcing their rights on the property in question as per Will Ex. PW-1/4.

91. In view of foregoing facts and discussion, it is held that petitioner has succeeded in proving that Will Ex. PW-1/4 is legal, genuine and last Will of late Sh. Vasdev Singh. Accordingly, issue no. 1 is decided in favour of petitioner and against the respondent no. 2.

**Findings on issue no. 2**

*1. Whether the petitioner is entitled to letter of administration of the above said Will being the beneficiary there under? OPP*

***92. Section 232 & 234 of the Indian Succession Act, 1925 are relevant for deciding this issue and the same are reproduced in the succeeding paras.***

93. Section 232 of the Indian Succession Act, 1925 states as under:

232. *Grant of administration of universal or residuary legatees.*

*When-*

*(a) the deceased has made a Will, but has not appointed an executor, or*

*(b) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the Will, or*

*(c) the executor dies after having proved the will, but before he has administered all the estate of the deceased, a universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.*

94. Section 234 of the Indian Succession Act, 1925 states as under;

234. *Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.—*

*When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly.*

95. In the Will in question, no executor has been appointed. There is no universal or residuary legatee in the Will in question. Petitioner and respondent no. 2 are the only beneficiaries under the Will in question. The petitioner has prayed in petition for issuance of Probate but as per Section 222 of Indian Succession Act, Probate can be granted only to executor of Will. The petitioner being beneficiary under the Will in question, is entitled for issuance of letters of administration as per section 234 of Indian Succession Act, 1925. It is already held above in issue no. 1 that the Will in question is legal, genuine and last Will of late Sh. Vasdev Singh. Therefore, it is held that petitioner is entitled for issuance of letters of administration in respect of property mentioned in the Will in question. Accordingly issue no. 2 is decided in favour of the petitioner and against respondent no. 2.

### RELIEF

96. In view of above discussion and findings, the present petition is allowed and it is ordered that Letters of administration in respect of the property mentioned in Will dated 04.12.2012 Ex PW-1/4 be issued to the petitioner under the seal of this court in the form set forth in Schedule VII of The Indian Succession Act 1925 with copy of Will, subject to completion of requisite formalities such as:

- (i) furnishing of requisite court fees on the value of the immovable property of the testator, coming into the hands of petitioner as per Will dated 04.12.2012.

(ii) and further subject to furnishing of administration-cum-surety bond to the amount of the value of immovable property of the deceased, coming into the hands of the petitioner.

(iii) Further, the petitioner is directed to file the inventory of immovable property within six months and final statement of account within one year from the date of receipt of letters of administration. The formalities of issuance of letters of administration, be completed within six months from the date of the judgment as per Section 290 & 291 read with Section 317 of Indian Succession Act.

97. It is clarified that this court has not decided right, title and share of the parties in the property in question and has decided only legality and genuineness of Will in question.

98. As per parties, the property in question is consisting ground floor, first floor and one room upon the second floor whereas as per report filed by Tehsildar, Rajouri Garden, the revenue staff visited the property in question and has filed the valuation report regarding property bearing no. 17/181, Subhash Nagar, New Delhi, consisting ground floor, second floor and third floor half roof right. This report is in contradiction of the case of the parties. Therefore, the petitioner is directed to file fresh valuation report from approved valuer, at the time of getting issued letters of administration.

99. File be consigned to the Record Room after making all the necessary compliance and due formalities.

**Announced in the open court  
on 28<sup>th</sup> March, 2026**

**(Shiv Kumar )  
District Judge-02 (West)  
Tis Hazari Courts, Delhi**