

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

Probate Case No.- 27/2020

CNR No. DLWT01-004201-2020

DLWT010042012020



1. Smt Nirmala

**W/o Sh. Surender Pal Singh
R/o Plot no. 140,
Pratap Nagar, Jail Road,
New Delhi-110064.**

2. Smt Sarla Kumari

**W/o Sh. Trilok Nath
R/o House no. 164, H-Block,
Gali no. 6, Raj Nagar, Part-2,
Palam Colony, Delhi-110077.**

3. Smt Sunita

**W/o Sh. Rajesh Kumar
R/o 20/462, Ashok Nagar,
Bahadurgarh, Haryana-124507.**

.....Petitioners

Versus

1. The State
(Govt. of NCT of Delhi)
Through Chief Secretary.
2. Sh. Ravinder Singh
S/o Late Sh. Chander Singh
R/o J-46, Adhyapak Nagar,
Nangloi Delhi-110041.
3. Smt Sunita
W/o Late Sh. Mahavir Singh
R/o J-46, Adhyapak Nagar,
Nangloi Delhi-110041.
4. Mr. Lakshya
S/o Late Sh. Mahabir Singh
R/o J-46, Adhyapak Nagar, Nangloi,
Delhi-110041.
5. Ms. Harshana
S/o Late Sh. Mahabir Singh
R/o J-46, Adhyapak Nagar,
Nangloi Delhi-110041.

.....Respondents

PETITION UNDER SECTION 278 OF THE INDIAN
SUCCESSION ACT, 1925 FOR GRANT OF PROBATE IN
RESPECT OF LAST WILL AND TESTAMENT DATED
27.06.2006 MADE BY LATE SH. CHANDER SINGH.

Date of institution of the case : 26.09.2020
Date reserved for judgment on : 04.05.2026
Date of pronouncement of judgment : 15.05.2026

JUDGMENT

- (1) Vide this judgment, I shall decide the petition filed by the petitioners, under Section 278 of the Indian Succession Act, whereby the petitioners have sought grant of Probate of last Will and testament of Late Sh. Chander Singh (*hereinafter to be referred as “the deceased”*), which was executed on 27.06.2006 by the testator/Sh. Chander Singh.

CASE OF THE PETITIONERS, AS PER THEIR PETITION:

- (2) According to the petition, the case of the petitioners, in nutshell, is that Sh. Chander Singh was the father of the petitioners and he expired on 15.10.2015 at Delhi. It is further averred that he left behind his legal heirs, who are petitioners and respondent no. 2 to 5, in the present case.
- (3) It is further averred in the petition that during his life time, the deceased had prepared and executed his last and final Will/ testament in Delhi on 27.06.2006 and the said Will was registered at SR-IIA-Punjabi Bagh, Delhi, in the presence of two witnesses, namely, Sh. Trilok Singh and Smt Geeta Devi.
- (4) It is further averred in the petition that at the time of his death, the deceased owned the following immovable

property:

Property bearing no. J-46, Adhyapak Nagar, Plot no. 135, measuring 200 sq. yards out of Khasra no. 12/23/1, situated at village Kamruddin Nagar, Delhi State, Colony known as Adhyapak Nagar, Nagloi, Delhi and bounded East: Road, West; Road 20 Feet, South: Plot no. 134, North Gali 10 Feet (hereinafter to be referred as property in question).

(5) It is further averred that one of the legal heirs, namely, Mr. Mahabir Singh expired on 20.06.2017 leaving behind his wife and two children i.e. Mrs. Sunita, Mr. Lakshya and Ms. Harshana, who after the death of Mr. Mahabir Singh are also the beneficiaries in the property in question bequeathed by Late Sh. Chander Singh to Late Sh. Mahabir Singh.

(6) It is prayed that the probate of the Will dated 27.06.2006 executed by deceased/Late Sh. Chander Singh be granted in favour of the petitioners.

**CASE OF RESPONDENT NO. 3 & 4, AS PER THEIR
WRITTEN STATEMENT.**

(7) It is contended by respondent no. 3 & 4, in the written statement that no cause of action has arisen in favour of the petitioners and against the respondents for filing the present petition and the petition is bad for misjoinder and non joinder of the necessary parties, hence, the petition is not maintainable and merits outright dismissal.

- (8) It is further contended that the property is situated in Nangloi and no market value of the property has been mentioned and no proper court fee has been paid, hence, the petition merits dismissal with costs.
- (9) It is further contended that without cancelling the first registered Will, Late Sh. Chander Singh could not get the second Will executed and registered with the concerned Sub-Registrar, hence, the petition is false and not maintainable and the petitioners thus have no locus standi to file and maintain the petition.
- (10) On merits, some of the paras of the petition has been denied as wrong and some of the paras of the petition are stated to be matter of record. It is further submitted that the alleged Will dated 27.06.2006 is null and void as same has been got executed and registered before SR-IIA, Punjabi Bagh, Delhi, without getting the first registered Will cancelled by a registered deed of revocation of the first Will. It is further submitted that the deceased had no right to divide the property as the said property is situated in an unapproved colony.
- (11) It is further contended that the deceased had no right to divide his property or bequeath the shares in the said property in favour of the petitioners as the said property was purchased with the funds provided by late husband of respondent no. 3 and the said fact has not been mentioned in the alleged second will dated 27.06.2006.

- (12) It is further contended that the the deceased had no right to bequeath the property in question in favour of the petitioners and the said shares were got bequeath by the undue pressure of the petitioners and the petitioners got the Will in question executed, forcibly from their father. It is further submitted that the division as suggested in this para is wrong. It is further submitted that the property in question was not sole owned by the deceased and the same was purchased with the funds of the deceased husband of the answering respondent no 3.
- (13) It is further submitted that the value of the property in question is more than Rs. 75,00,000/- at present and no proper court fee has been affixed as per the market value of the property in question.
- (14) It is pertinent to mention that notice of the petition was served upon respondent no. 2, he did not appear before the court, accordingly, he was proceeded ex parte, vide order dated 15.12.2022.
- (15) It is also pertinent to mention that respondent no. 5 was served through publication in Newspaper "The statesman" dated 26.07.2023 but he failed to appeared before the court, therefore, he was proceeded ex parte on 20.11.2023.
- (16) In the present case, only respondent no. 3 and respondent no. 4 are contesting the present petition.

ISSUES

(17) On the basis of the pleadings, the following issues were framed vide order dated 05.01.2024.

1. Whether the Will dated 27.06.2006 has been executed by testator Late Sh. Chander Singh, voluntarily, in his sound disposing mind and is his last, valid, legal and genuine Will? OPP.

2. Whether the petitioner is entitled to the grant of Probate in respect of aforesaid Will dated 27.06.2006, as prayed for? OPP.

3. Whether the present petition is bad for misjoinder and non-joinder of necessary parties and is liable to be dismissed? OPR-3 &4.

4. Relief.

(18) Parties were directed to adduce evidence.

EVIDENCE ON BEHALF OF THE PETITIONERS:

(19) Petitioners, in support of their case, have examined only one witness i.e. Sh. Trilok Nath (one of the attesting witness of the Will in question).

(20) Sh. Trilok Nath has appeared in the witness box as PW-1 and tendered his affidavit in evidence as Ex PW-1/A and he deposed that the Will dated 27.06.2006 was

executed by Late Sh. Chander Singh and it was registered in Sub-Registrar office, Punjabi Bagh, in his presence.

(21) During cross examination, PW-1 has deposed that the Will in question was executed on 27.06.2006 and the said Will was executed in his presence. PW-1 further deposed that Sh. Chander Singh/the deceased was his father in law and he is the husband of Smt Sarla/petitioner no 2 and she has been appointed as an executor in the Will in question. PW-1 further deposed that he has no interest in the property mentioned in the Will in question as he has his own property and the Will was executed in his wife's favour, out of affection by his father.

(22) PW-1 further deposed that the said Will was written in Sub-Registrar, Punjabi Bagh. PW-1 further deposed that he did not read the Will while signing it, he again said, he read the Will. PW-1 further deposed that the said Will is written in English Language. PW-1 further deposed that at the time of execution of the Will, he along with Smt Nirmala, Smt Sarla, Smt Sunita, Sh. Chander Singh and Smt Geeta Devi, who was other attesting witness of the Will in question, was present. PW-1 further deposed that he does not remember how much registration fee was paid. PW-1 further deposed that the testator had signed on the Will in English Language. PW-1 further deposed that the testator was literate and was working in Jal Board.

(23) PW-1 further deposed that at the time of the execution of the Will, the other attesting witness was also present. PW-1 further deposed that the said Will was

executed by the testator with his own Will and without any fear and force. PW-1 further deposed that the Will was typed and registered on the same day.

EVIDENCE ON BEHALF OF THE RESPONDENT NO. 3&4.

- (24) No evidence has been led on behalf of the respondents, in the present case.

FINAL ARGUMENTS

- (25) I have heard final arguments from Ld counsel for the petitioner and ld counsel for respondents and have perused entire record, including pleadings, documents and testimonies of the witnesses recorded in court and written submissions filed on behalf of the petitioner and on behalf of the respondent no. 3 & 4.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

- (26) Ld counsel for the petitioners has argued that the present petition has been filed by the legal heirs of Late Sh. Chander Singh, who had executed Will dated 27.06.2006 and registered with SR-IIA, Punjabi Bagh, New Delhi, in presence of two witnesses, Ms. Geeta and Sh. Trilok Nath. He further argued that he had left his property in the name of his eldest son Late Mahavir singh and three daughters/petitioners.

- (27) Ld counsel for the petitioners has further argued that the deceased has left the property in question in the

name of the petitioners and his eldest son/Sh. Mahavir Singh, who is survived by respondent no. 3 to 5 being his wife and children.

(28) Ld counsel for the petitioners further argued that the Will in question has been challenged by respondent no. 3 and 4 but they have failed to provide any supporting evidence against the same. He further argued that neither any evidence as well as any witness has come forward in support of the challenge of the respondents against the registered Will, despite giving them three opportunities.

(29) It is further argued that in accordance with the registered Will, Sh. Mahavir Singh was to be provided with share of 50 sq. yards out of total land ad measuring 200 sq. yards as his legal heir and the remaining 150 sq. yards was to be divided among the present petitioners.

(30) Ld counsel for the petitioners has further argued that despite having challenged the registered will, the respondent no. 3 to 5 have sold their shares of 50 sq. yards to some other person without providing any prior information to the petitioners and court as well. He further argued that the said conduct of the respondents shows their lack of faith in our judicial system as well as their greed for the property against which the said registered will was executed.

(31) Ld counsel for the petitioner further argued that at the time of making and registering the Will, Sh. Chander Singh, voluntarily, went to Sub-Registrar office and got

the will registered as he had understood the importance of his will being registered. He further argued that the said act is sufficient to prove that not only he was in good health but in a sound state of mind to understand the need and necessity of his actions for benefit of his children in the future when he will not longer be there with them. Ld counsel for the petitioner further argued that Late Sh. Chander Singh had executed the Will, voluntarily, in his sound disposing state of mind and is his last, valid, legal and genuine Will.

(32) Ld counsel for the petitioners further argued that the petitioners approached the court to fulfill the last wish of their father that entrusted them during his lifetime vide said registered Will. Ld counsel for the petitioners further argued that the petitioners have proved their case beyond any reasonable doubt.

(33) Ld counsel for the petitioners further argued that at the time of execution of the will in question, his youngest son, namely, Sh. Ravinder Singh was living on his own at some other place and had broken family ties, thereby leading him to be left out in the present will and remaining children of the deceased have been named in the will in question being his legal heirs. Ld counsel for the petitioners argued that Sh. Ravinder Singh has been made a party in the present matter as respondent no. 2 but he failed to come before the Court despite summons served upon him and vide order dated 15.12.2022, he was proceeded ex parte and on 20.11.2023, respondent no. 5

was proceeded ex parte being not appeared before the court.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

NO.3 & 4

(34) Ld counsel for the respondents argued that no cause of action has arisen in favour of the petitioners and against the respondents for filing the present petition. He further argued that without cancelling the first registered Will, late Sh. Chander singh, could not get the second Will executed and registered with the concerned Sub-Registrar, hence, the petition is false and not maintainable and the petitioners thus have no locus standi to file and maintain the petition. Ld counsel for the respondents further argued that the alleged second registered Will is not valid will nor the same can be acted upon without cancelling the first registered Will.

(35) It is further argued that the alleged Will dated 27.06.2006 is null and void as the same has been got executed and registered without first getting the first registered will cancelled by execution of registered deed of revocation of the first Will.

(36) Ld counsel for the respondents further argued that the petition is bad for misjoinder and non joinder of the necessary parties, hence, the petition is not maintainable and merits outright dismissal.

- (37) Ld counsel for the respondents further argued that the property is situated in Nangloi and no market value of the property has been mentioned and no proper court fee has been paid, hence, the petition merits dismissal with costs.
- (38) Ld counsel for the respondents further argued that the deceased had no right to divide his property or bequeath the shares in the said property in favour of the petitioners as the said property in dispute was purchased with the funds provided by late husband of respondent no. 3 and this fact has not been mentioned in the alleged second will dated 27.06.2006.
- (39) Ld counsel for the respondents further argued that the deceased had no right to bequeath the property in question in favour of the petitioners. Ld counsel for the respondents further argued that the shares in the property has been got bequeathed from the deceased by putting undue pressure by the petitioners and the petitioners got the Will in question, executed forcibly from their father. Ld counsel for the respondents further argued that that the property in question was not sole owned by the deceased and the same was purchased with the funds of the deceased husband of the answering respondent no. 3.
- (40) Ld counsel for the respondents further argued that the value of property in question is more than Rs. 75,00,000/- at present and no proper court fee has been affixed as per the market value of the property in question.

(41) Ld counsel for the respondents further argued that the deceased got executed and registered a first Will before the concerned Sub-Registrar, hence, the Will in question is invalid document and cannot be acted upon.

(42) Ld counsel for the respondents further argued that the list of witness filed on behalf of the petitioners mentioned the four witnesses but the petitioner produced only one witness namely Sh. Trilok Nath/attesting witness, who is the husband of petitioner no. 2.

ISSUE -WISE FINDING

My issue wise findings are as under:-

Finding on issue no. 3

Issues no. 3. Whether the present petition is bad for misjoinder and non-joinder of necessary parties and is liable to be dismissed? OPR-3 &4.

(43) The onus to prove issue no. 3 is upon the respondent no 3 &4. In order to prove the said issue, the respondents have not examined any witness.

(44) Respondent no. 3 & 4 have not disclose the names of the persons, who are necessary parties in the present case and who are not impleaded in the present case by the petitioner, in their objections. The respondents have also not disclosed the name of the persons, who are wrongly made party in the present case.

(45) In view of foregoing facts, it is held that the respondent no 3 & 4 are failed to prove that the present petition is bad for misjoinder and non-joinder of necessary parties. Accordingly, issue no. 3 is decided against the respondent no. 3 & 4 and in favour of the petitioner.

Findings on issue no. 1 & 2

Issues no. 1. Whether the Will dated 27.06.2006 has been executed by testator Late Sh. Chander Singh, voluntarily, in his sound disposing mind and is his last, valid, legal and genuine Will? OPP.

&

Issues no. 2. Whether the petitioner is entitled to the grant of Probate in respect of aforesaid Will dated 27.06.2006, as prayed for? OPP.

(46) Issue no. 1 & 2 are interconnected and having mutual bearing, therefore, issue no. 1 & 2 are being taken together.

(47) The onus to prove issue no. 1 and 2 is upon the petitioners. In order to prove the said issues, the petitioner have examined only one witness i.e. PW-1/Sh. Trilok Nath and he is one of the attesting witness of the Will in question.

(48) Before adjudicating the issues, I would like to discuss various relevant statutory provisions involved in the present case.

- (49) 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”.
- (50) Section 59 of Indian Succession Act declares that every person(not being a minor) “of sound mind” may dispose of his property by Will.
- (51) Section 61 of Indian Succession Act states that Will obtained by fraud, coercion or importunity- A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.
- (52) 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”.

(53) ***Section 70 of Indian Succession Act, 1925 states as under:-***

70. Revocation of unprivileged Will or codicil.—

No unprivileged Will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

Illustrations

(i) A has made an unprivileged Will. Afterwards, A makes another unprivileged Will which purports to revoke the first. This is a revocation.

(ii) A has made an unprivileged Will. Afterwards, A being entitled to make a privileged Will makes a privileged Will, which purports to revoke his unprivileged Will. This is a revocation.

(54) 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 as under:

“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.”

(55) The principles for proving the Will have been well settled, in catena of Judgments by the Hon’ble Supreme Court of India as well as 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.

(56) 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."

(57) **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 in order 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.

(58) In **Shashi Kumar Banerjee vs. Subodh Kumar Banerjee**, AIR 1964, SC 529, a Constitution Bench of the Hon'ble Supreme Court of India had the occasion to rule on the principles governing mode of proof of a Will before a probate court. Referring, inter alia, to its earlier decision of **case titled H. Venkatachala Iyengar Vs. B.N. Thimmajamma & Ors (Supra)** 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...”
(emphasis supplied)

(59) In ***Hari Singh & Anr. Vs State & Anr. 176 (2011) DLT 199 (DB)***, the Hon'ble High Court of Delhi made reference to 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 testament 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 ***Kavita Kanwar Vs Mrs Pamela Mehta*** decided on 19.05.2020 passed by Hon'ble Supreme Court of India has held as follows:

16. A Will is executed to alter the ordinary mode of succession and by bound to result in earlier reducing or depriving the share of natural heirs. If a person intends his the very nature of things it is property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance specially in a case where the bequest has been made in favour of an offspring. As held in P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar and Ors.: [1995] 2 SCR 585, it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind.

(61) In the light of Legal principles as carved out in catena of Judgments by the Hon'ble Superior Courts and some of them as discussed above, it is obligatory for the petitioner 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 by his own free will, meaning thereby that he was a free agent when he executed the Will:

(iv) The petitioner has to prove that the Will in question is the last Will of the testator :

(v) The petitioner has also to remove all the suspicious circumstances, surrounding the execution of the Will:

(vi) For proving the Will, one attesting witness of the Will, at least, if alive, must be examined in the Court as per section 68 of the Indian Evidence Act.

(62) In his examination in chief by way of affidavit, PW-1 has deposed that he knew Late Sh. Chander Singh, who is his father in law and was residing at J-46, Adhyapak Nagar, Nangloi, New Delhi-110041.

(63) PW-1 has further deposed that Late Sh. Chander Singh, during his life time had executed a Will dated 27.06.2006. PW-1 has further deposed that at the time of execution of the said Will the executor and the witnesses all were being present at the time of the execution of the Will dated 27.06.2006 and also the executor and the witnesses including himself were being present at the time

of registration of the said Will dated 27.06.2006 before the office Sub-Registrar-IIA, Punjabi Bagh, Delhi, Sh. Chander Singh was in sound disposing mind in good physical condition to execute the Will.

(64) PW-1 further deposed that Sh. Chander Singh had himself executed the said Will and same was registered at the office of Sub-Registrar-IIA, Punjabi Bagh, Delhi, New Delhi and had signed the said Will on each page after understanding the contents of the said Will and the said Will was executed by Sh. Chander Singh voluntarily of his own, Sh. Chander Singh had put his signature on the said Will in his presence. PW-1 further deposed that he had signed the said Will of Sh. Chander Singh as a witness in the presence of and on the request of Sh. Chander Singh. PW-1 further deposed that another witness, namely, Smt Geeta W/o Sh. Ashok Kumar as a witness in his presence and in the presence of and on the request of Sh. Chander Singh.

(65) The first contention of respondent no. 3 & 4 is that the deceased had no right to divide his property or bequeath the shares in the said property in favour of the petitioners as the said property was purchased with the funds provided by late husband of respondent no.3 and the said fact has not been mentioned in the alleged second will dated 27.06.2006. It is further contended on behalf of respondent no. 3 & 4 that the deceased had no right to bequeath the property in question in favour of the petitioners and the shares in the property were got

bequeathed by the petitioners by putting undue pressure upon the deceased and the petitioners got the Will in question executed, forcibly from their father. It is further contended that the property in question was not sole owned by the deceased and the same was purchased with the funds of the deceased husband of the answering respondent no. 3.

(66) No evidence has been led by the respondents to prove that the property in question was purchased with the funds provided by the deceased husband of respondent no. 3. The respondents have not mentioned the amount of funds provided by deceased husband of respondent no. 3 for purchasing the property in question. The respondent no. 3 & 4 have not even mentioned any date, month and year, when the said funds were provided for purchasing the property in question. The respondent no. 3 & 4 have not even stepped into witness box for deposing the said facts on oath. Therefore, it is held that the respondent no. 3 & 4 have failed to prove that the funds for purchasing the property in question was provided by the deceased husband of respondent no. 3.

(67) It is also settled law that the probate court has not to decide right, title and 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 testator 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 state of mind. The question relating to the title of the parties as well as of the testator in the bequeath property, is alien to the probate jurisdiction of the Court. In view of the abovesaid judgment and settled principles of Law, the contention of the respondent no. 3 & 4 that the deceased had no right to execute the Will, in respect of the suit property, is not tenable and stands rejected as it is beyond the domain of this court to decide the title of the deceased in the suit property. Reliance is placed upon the following judgements.

- (68) Hon'ble Apex Court, in a case titled **Krishna Kumar Birla Vs Rajendra Singh Lodha & Ors**, decided on 31.03.2008, has held as follows:

“This 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.”

- (69) In a case titled “ **Kanwarjit Singh Dhillon Vs Hardyal Singh Dhillon and Ors**” decided on 12.10.2007, AIR (SCW) 6802, Hon'ble Supreme Court of India, the relevant para of the said judgement are as follows:

“ It is well settled law that the functions of a probate court are to see that the Will executed by the testator was actually executed by him in a sound disposing state of mind without coercion or undue influence and the same was duly attested. It was, therefore, not competent for the probate court to determine whether late S.Kirpal Singh had or had not the authority to dispose of the suit properties which he purported to have bequeathed by his

Will. The probate court is also not competent to determine the question of title to the suit properties nor will it go into the question whether the suit properties bequeathed by the Will were joint ancestral properties or acquired properties of the testator”.

(70) The respondent no. 3 & 4 have contended that the Will in question was got executed by the petitioners from the deceased by putting undue pressure upon him and it was forcibly executed from the deceased. The burden is upon the respondents to prove that the Will in question was not executed voluntarily by the deceased. The respondents have not led any evidence to prove the said facts.

(71) PW-1/Sh. Trilok Nath has deposed in his examination in chief that Late Sh. Chander Singh (the testator) was in sound disposing mind and in good physical condition to execute the Will. PW-1 further deposed that Late Sh. Chander Singh had executed the Will in question, after understanding the contents of the said Will and the said Will was voluntarily, executed by Late Sh. Chander Singh.

(72) During cross examination, PW-1 further deposed that the testator was literate and was working in Jal Board. PW-1 further deposed that the said will was executed by the testator with his own will without any fear and force.

(73) In the present case, Will in question is a registered Will. Hence, the fact of registration of Will is also an important circumstances regarding genuineness of the Will

in question. Reliance is placed upon the following judgments of Hon'ble High court of Delhi.

(74) Hon'ble High Court of Delhi in a case titled Smt. Veena Khanna Vs State & Anr, Test CAS, 72/2017, 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”.

(75) In view of the testimony of PW-1, it is proved that the Will in question was executed by Late Sh. Chander Singh, voluntarily, without any fear, force or undue pressure. The respondent no. 3 & 4 stated in their written statement that the value of the property in question is more than Rs. 75,00,000/- at present and no proper court fee has been affixed as per the market value of the property in question.

(76) It is settled law that the petitioners are required to pay court fee on the value of the bequeathed property, after proving that the Will of the testator is legal, valid and last Will. So, the petitioners are entitled to file valuation of property in question along with court fee after getting

finding in their favour regarding legality and validity of will in question. The abovesaid contention of respondent no. 3 & 4 stands rejected.

(77) It is further contended on behalf of respondent no. 3 & 4 that the alleged Will dated 27.06.2006 is null and void as same has been got executed and registered before Sub-Registrar-IIA, Punjabi Bagh, Delhi, without getting the first registered Will cancelled by execution of registered deed of revocation of the first Will.

(78) The Will in question is a registered Will. In the Will dated 27.06.2006, Late Sh. Chander Singh has mentioned that he revoke his Will dated 09.06.2006 registered with the office of Sub-Registrar-IIA, Punjabi Bagh, West Delhi and all other previous Will, codicils and testamentary disposition. The deceased has validly revoked the previous Will dated 09.06.2006 by executing subsequent registered Will dated 27.06.2006. So, the abovesaid contention of respondent no. 3 & 4 that the Will in question is null and void, is not valid contention as previous Will dated 09.06.2006 has been revoked by the deceased by registered subsequent Will dated 27.06.2006. Reliance is placed upon the following judgement of Hon'ble Supreme Court of India

(79) In a case titled Badrilal Vs Sursh & Ors, civil Appeal no. Q 6524 of 2021, decided on 28.10.2021, the the Hon'ble Supreme Court of India has observed as under regarding requirement for revocation of previous Will:

The agreement dated 12th May 2009 has been executed during the lifetime of Mangilal. Only Suresh and Ramkanya are the parties to the said agreement. Though, clause no.8 of the said agreement recites that the Will earlier executed by Mangilal stands cancelled, Mangilal is not shown as a party to the agreement but his thumb impression appears on the third page of the said document in the left margin. The question is whether the said agreement will amount to the revocation of the Will dated 6th May 2009. Section 70 of the Indian Succession Act, 1925 deals with revocation of unprivileged Will which reads thus :-

“70. Revocation of unprivileged Will or codicil.—No unprivileged Will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same. Illustrations:-

(i) A has made an unprivileged Will. Afterwards, A makes another unprivileged Will which purports to revoke the first. This is a revocation.

(ii) A has made an unprivileged Will. Afterwards, A being entitled to make a privileged Will makes a privileged Will, which purports to revoke his unprivileged Will. This is a revocation”.

In view of Section 70, revocation can be made only by following modes :-

(a) By Execution of another Will or codicil.

(b) A writing executed by the testator declaring an intention to revoke the Will and executed in the manner in which an unprivileged Will is required to be executed.

(c) By burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

(80) In view of foregoing facts and discussions, it is held that the petitioners have succeeded in proving that the Will in question was executed by Late Sh. Chander Singh, voluntarily, after understanding the contents of the Will and the Will in question is legal, valid and last Will of Late Sh. Chander Singh.

(81) In the Will dated 27.06.2006, it is mentioned that the testator has already given a share of 50 sq. yards out of 200 sq. yards to his son Sh. Mahavir Singh and the balance 150 sq. yards should be divided equally among his three daughters, namely, Sh. Nirmala Kumari, Smt Sunita Kumari and Smt Sarla (who are the petitioners in the present case). The parties of the present case are Hindu by religion.

(82) The petitioners are the beneficiaries under the Will in question, so, Section 234 of the Indian Succession Act, 1925 is applicable in the present case.

(83) **Section 234 in The Indian Succession Act, 1925 states as under:**

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.

(84) In this petition, the petitioners are seeking certificate of probate of the Will in question. However, the petitioners are not appointed as an executor in the Will in question. As per Section 222 of Indian Succession Act, probate of the Will can be granted only to an executor appointed by the Will. Therefore, probate cannot be issued in favour of the petitioners. However, the petitioners are the beneficiaries in the Will in question. Hence, in view of Section 234 of Indian Succession Act, 1925, the petitioners

are entitled to receive letters of administration instead of probate of the Will.

- (85) In view of the facts and discussion, issue no. 1 & 2 are decided in favour of petitioners and against the respondent no 3 & 4.

RELIEF

- (86) In view of above discussion and findings, the present petition stands allowed and it is ordered that letters of administration in respect of 150 sq. yards, property of the deceased, which is mentioned in the Will in question, be issued to the petitioners 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 immoveable property of the testator, coming into the hands of the petitioners, as per Will dated 27.06.2006.
- (ii) further subject to furnishing of administration cum surety bond to the amount of the value of immoveable property of the deceased, coming into the hands of the petitioners.
- (iii) further, the petitioners are directed to file the inventory of immoveable property within six months and final statement of account within one year from the date of receipts 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 of Indian Succession Act. The petitioners are also directed to file valuation report of the property in question at the time of applying for issuance of letters of administration.

(87) File be consigned to record room after due compliance.

**Announced in the open court
on 15.05.2026**

**(SHIV KUMAR)
DJ-02 (West)/, THC, Delhi.**