



2026:DHC:47



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

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Judgment reserved on: 4th December 2025
Judgment pronounced on: 6th January 2026

+ **CS(OS) 2159/2002 & I.A. 36924/2024**

KANTA SETHI

.....Plaintiff

Through: Mr. Pradeep Kumar Verma, Advocate.

versus

HANS RAJ AND ORS.

.....Defendants

Through: Ms. Shellen Bajaj & Mr. Manak Budhiraja, Advocates.

+ **TEST.CAS. 90/2014**

SUDESH GULATI & ANR

.....Petitioners

Through: Ms. Shellen Bajaj & Mr. Manak Budhiraja, Advocates.

versus

STATE & ORS.

.....Respondents

Through: Mr. Abhinav Garg, Panel Counsel for GNCTD with Ms. Pallavi Raj, Advocate.
Mr. Pradeep Kumar Verma, Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. By way of this judgment, I shall decide the following:



- i. CS(OS) 2159/2002 seeking partition of the immovable properties forming part of the estate of Late Smt. Krishna Wanti and Late Sh. Hans Raj Gulati, along with other ancillary reliefs.
- ii. TEST.CAS.90/2014 seeking the grant of probate of the registered Will dated 30th May 2003, executed by Sh. Hans Raj Gulati.

PLEADINGS IN CS(OS) 2159/2002

2. In the plaint, it has been pleaded as under:

- i. The plaintiff is one of the daughters of the Late Smt. Krishna Wanti and Late Sh. Hans Raj Gulati (defendant no.1). The defendant no.2, Sh. Sudesh Gulati is the brother of the plaintiff and the defendant no.3, Sh. Sanjay Gulati is the son of the defendant no.2.
- ii. The mother of the plaintiff, Late Smt. Krishna Wanti was the owner of the *shop No. 39, along with first floor, and 2nd Floor, Krishna Market, Kalkaji, New Delhi- 110019.*
- iii. The plaintiff's mother gave her exclusive possession of the entire second floor of the aforesaid property for her consultancy business, with the defendants' acquiescence.
- iv. The defendants no.1 and 2 were living on the first floor of the suit property. The mother of the plaintiff was living on the first floor till her death on 30th September 2002. The mother of the plaintiff expired intestate.
- v. The plaintiff lived on the second floor of the aforesaid property up to 21st November 2002, after desertion by her husband.
- vi. On 21st November 2002, the plaintiff reported threats by defendant no.2's wife, who had begun harassing her, and on 25th December



- 2002, the defendant no.2 and his wife broke in and physically assaulted the plaintiff in the suit property.
- vii. The plaintiff locked the flat on the 2nd floor of the aforesaid property and lodged a police complaint on 16th December 2002.
3. The plaintiff, under the fear of dispossession by the defendants, filed the instant suit on 20th December 2002, claiming the following reliefs:
- “a) That the preliminary decree for declaring the share of the plaintiff in the properties of her deceased mother and father may kindly be declared and possession be given to the plaintiff;*
- b) Cost of the proceedings may kindly be granted in favour of the plaintiff;*
- c) Any other relief which this Hon’ble Court may deem fit and proper also kindly be granted in favour of the plaintiff;”*
4. Summons in the suit were issued on 6th January 2003, on which date the defendants were directed to maintain *status quo* with respect to the premises occupied by the plaintiff in the aforesaid property.
5. The defendants contested the present suit by filing a common written statement, in which it has been pleaded as under:
- i. The deceased mother of the plaintiff during her lifetime executed a Will dated 12th October 2001, and by virtue of that said Will, bequeathed her entire movable and immovable property in favour of her husband, *i.e.* late Sh. Hans Raj Gulati (defendant no.1).
- ii. Consequent thereto, upon the death of Smt. Krishna Wanti (mother of the plaintiff), in September 2002, the entire estate vested in Sh. Hans Raj Gulati as the sole beneficiary.
- iii. Sh. Hans Raj Gulati (father of the plaintiff/defendant no.1), in turn, executed his own Will dated 30th May 2003, bequeathing his estate



- in favour of his son Sh. Sudesh Gulati (defendant no.2) and grandson, Sh. Sanjay Gulati (defendant no.3).
- iv. The plaintiff concealed the fact that Smt. Krishna Wanti executed a Will dated 12th October 2001, devising all her property to her husband (defendant no.1), and that the defendant no.1 himself executed a Will on 30th May 2003 in favour of the defendants no.2 and 3.
- v. The plaintiff never lived on the disputed premises at any material time and instead she resided with her husband in her matrimonial house at *T-74/B, Geetanjali Apartments, Khirki Extension, Malviya Nagar*.
- vi. The question of the plaintiff's mother giving the second floor, or any other portion of the property in *Krishna Market*, to the plaintiff does not arise, as the said portion was under tenancy and in occupation of a tenant.
- vii. The present suit has not been properly valued for the purpose of court fees, as the plaintiff was not in possession of any portion of the aforesaid property. The suit is unsustainable on the ground of non-joinder of all the heirs and legal representatives of the late Smt. Krishna Wanti (mother of the plaintiff).
6. The father of the plaintiff, Sh. Hans Raj Gulati (defendant no.1) expired on 21st December 2005, during the pendency of the present suit. In these circumstances, the plaintiff filed an application under Order VI Rule 17 of the Civil Procedure Code, 1908, seeking amendment of the plaint on 30th January 2009. The said application was allowed *vide* order dated 27th August 2009. As per the amended plaint, the plaintiff claimed a share in her mother's property



bearing shop No. 39, along with first floor, and 2nd Floor, Krishna Market, Kalkaji, New Delhi- 110019 as well as property belonging to the plaintiff's father/defendant no.1 bearing no. H-61, Kalkaji, New Delhi-110019 (hereinafter collectively referred to as 'suit properties').

7. The amended Written Statement was filed by the defendants on 23rd March 2010. In the said Written Statement, the defendants propounded a Will dated 30th May 2003 executed by Sh. Hansraj Gulati in favour of the defendants no.2 and 3.

8. In the replication, the plaintiff reaffirmed the assertions made in the plaint and also claimed that the Will dated 12th October 2001, executed by Smt. Krishna Wanti in favour of her husband/defendant no.1 was invalid on the ground of false attestation. The plaintiff also denied the existence of the Will dated 30th May 2003 in her amended replication.

ISSUES IN THE SUIT

9. Issues in the captioned suit were framed on 2nd August 2010 and further modified on 15th April 2013. The following issues have been framed in CS (OS) 2159/2002:

(i) Whether the suit is bad for non-joinder of necessary parties?

~OPD

(ii) Whether the suit has been properly valued for the purpose of court fee and appropriate court fees has been paid?

~OPP

(iii) Whether the Will dated 12.10.2001 purported to be made by Smt. Krishna Wanti is genuine and valid Will, if so, to what effect?

~OPD

(iv) Whether the Will dated 30.5.2003, purported to be made by Sh.Hans Raj Gulati, deceased defendant no.1 is genuine and valid, if so, to what effect?

~OPD



(v). *Whether the suit properties bearing Shop No. 39, Krishna Market, Kalkaji, New Delhi-19 and House No. H-61, Kalkaji, New Delhi-19 are liable to partition, if so, to what effect?* ~OPP

(vi) *If issue no. (v) is decided in affirmative, what is the share of the plaintiff in the aforesaid properties?* ~OPP

(vii) *Relief.*

PLEADINGS IN PROBATE CASE

10. During the pendency of the present suit, a probate petition, being PC No.18 of 2012, was filed before the Saket Courts, New Delhi, on 30th January 2012, by Sh. Sudesh Gulati (son of Late Sh. Hans Raj Gulati) and Sh. Sanjay Gulati (grandson of Late Sh. Hans Raj Gulati), seeking probate/letters of administration in respect of the registered Will dated 30th May 2003, executed by the Late Sh. Hansraj Gulati (hereinafter ‘testator’) in their favour. The petitioners are the principal beneficiaries under the aforesaid Will, the testator having bequeathed his movable and immovable properties, including the suit properties, in their favour.

11. It is pleaded that the testator had become the absolute owner of the property bearing *shop No. 39, along with first floor, and 2nd Floor, Krishna Market, Kalkaji, New Delhi- 110019*, upon the demise of his wife, Smt. Krishna Wanti, who had, by her Will dated 12th October 2001, bequeathed all her estate in favour of the testator.

12. The petition was initially contested by the respondents no.2 to 7, who are the legal heirs/daughters of the testator, including Smt. Kanta Sethi (respondent no.5/plaintiff), who filed their objections to the grant of probate. The respondents no.3, 4, 6 and 7 filed a common reply/objections to the Probate petition and the respondents no.2 and 5 filed their separate objections.



13. *Vide* order dated 2nd March 2021, the 'No Objection' to the grant of probate of the aforesaid Will, as filed by the respondents no.2 and 7, were taken on record.

14. The following objections have been raised by the objectors to the grant of probate:

- i. The probate petition has been filed after a delay of seven (7) years from the date of death of the testator, *i.e.* 21st December 2005.
- ii. The Will was executed under suspicious circumstances. The testator, being about 92 years of age and in a deteriorated health condition, was not in a sound state of mind at the time of execution of his Will.
- iii. The testator was not a well-educated man and the Will was written in English. The Will does not mention that the contents of the Will were explained to the testator.
- iv. Out of the four (4) properties mentioned in the Will, two (2) properties had already been sold by the testator during his lifetime.
- v. The testator could not have bequeathed the suit property belonging to his wife, Late Smt. Krishna Wanti, since the said property was the subject matter of the Will dated 12th October 2001 of the Late Smt. Krishna Wanti, whose execution and attestation is yet to be proved.
- vi. The last Will of the testator was allegedly torn by Sh. Sudesh Gulati in front of all the daughters of the testator during the Barsi ceremony of the testator, and thus, the authenticity of the 2003 Will is doubtful.

ISSUES IN PROBATE CASE



15. The following issues in the probate case were framed on 24th January 2013 by the District Court:

i. *Whether petitioners are entitled for letter of administration/probate of WILL. dated 30.05.2003 executed by Late Shri Hans Raj Gulati?*
~OPP

ii. *Whether the objections filed on behalf of objectors/respondents no. 2 to 7 are valid and maintainable?*
~OPD

iii. *Whether Will dated 30.05.2003 executed by Late Shri Hans Raj Gulati is his last and final testament?*
~OPP

iv. *Relief.*

16. The following additional issues were framed by order dated 26th February 2014:

3A. *Whether there was another Will of Hansraj Gulati (other than the privileged Will), if so, which date, month and year or the name of the legatee executed by him?*
~OPR 3,5&7

3B. *Whether the Will referred in issue no.3A was torn in the family ceremony in the presence of daughters of Shri Hans Raj Gulati, if so its consequences?*
~OPR 3,5 &7

17. TR.P.(C) 33/2012 was filed by the plaintiff in the CS (OS) 2159/2002, seeking transfer of the Probate Case No.18 of 2012 from the Saket Courts, and consolidating with the suit before this Court. By order dated 21st May 2013, the Probate Case was directed to be withdrawn from the Court of ADJ, Saket Courts, after recording of the evidence and consolidating with CS (OS) 2159/2002.



18. *Vide* order dated 16th May 2014, the Probate Case No.18 of 2012 was withdrawn from the District Court and was directed to be tried along with the CS (OS) 2159/2002.

19. The Probate Case was registered as TEST. CAS. 90/2014 in this Court.

20. *Vide* order dated 16th September 2014, the statement of the petitioners/defendants was recorded to the effect that the evidence recorded in PC No. 18 of 2012 on behalf of the petitioners may be read as evidence on behalf of the defendants in CS (OS) 2159/2002.

21. The evidence was concluded before this Court on 2nd May 2018.

22. Arguments were heard on 6th August 2025, 21st August 2025, 18th September 2025, 27th November 2025 and 4th December 2025, after which the judgment was reserved.

23. My issue-wise findings in the suit and the probate petition are as under:
Issue no.(i): Whether the suit is bad for non-joinder of necessary parties?~OPD

24. It is the defendants' submission that the suit is eclipsed on account of non-impleadment of necessary and proper parties. In a suit for partition based on intestate succession, all the legal heirs of the deceased must be impleaded to ascertain the exact share of the plaintiff.

25. It is an admitted position that Late Smt. Krishna Wanti and Late Sh. Hansraj Gulati were survived by six (6) daughters and one (1) son. The plaintiff is one of the daughters claiming share in the suit properties on the basis of intestate succession and the defendant no.2 is the son, being the other legal heir. However, the plaintiff has not impleaded her remaining siblings, *i.e.* the other five (5) daughters, being: i) Smt. Raj Rani Arora, ii) Smt. Soma



@ Sunita Dua, iii) Smt. Veeran @ Varsha Khara, iv) Smt. Madhu Dhawan and v) Smt. Alka Dhall.

26. The plaintiff has not given any explanation as to why the aforesaid legal heirs have not been impleaded in the present suit.

27. Reference may be made to the judgment of the Supreme Court in ***Kanakarathanammal v. V.S. Loganatha Mudaliar and Ors.***¹, wherein the appellant/plaintiff's appeal against the decree passed by the High Court in a suit for partition of her mother's property was dismissed on the grounds of non-joinder of necessary parties, *i.e.* the brothers of the plaintiff, even though the Court found that the property belonged to the mother and the plaintiff was one of the three (3) legal heirs. The relevant paragraph of the said judgment is set out below:

*“15. It is unfortunate that the appellant's claim has to be rejected on the ground that she failed to implead her two brothers to her suit, though on the merits we have found that the property claimed by her in her present suit belonged to her mother and she is one of the three heirs on whom the said property devolves by succession under s. 12 of the Act. That, in fact, is the conclusion which the trial Court had reached and yet no action was taken by the appellant to bring the necessary parties on the record. It is true that under O. 1 r. 9 of the Code of Civil Procedure no suit shall be defeated by reason of the misjoinder or non-joinder of parties; but **there can be no doubt that if the parties who are not joined are not only proper but also necessary parties to it, the infirmity in the suit is bound to be fatal.** Even in such cases, the Court can under O. 1 r. 10, sub-rule 2 direct the necessary parties to be joined, but all this can and should be done at the stage of trial and that too without prejudice to the said parties' plea of limitation. Once it is held that the appellant's two brothers are co-heirs with her in respect of the properties left intestate by their*

¹ MANU/SC/0244/1963



mother, the appellant suit filed by the appellant partakes of the character of a suit for partition, and in such a suit clearly the appellant alone would not be entitled to claim any relief against the respondents. The estate can be represented only when all the three heirs are before the Court. If the appellant persisted in proceeding with the suit on the basis that she was exclusively entitled to the suit property, she took the risk and it is now too late to allow her to rectify the mistake.”

28. The aforesaid decision of the Supreme Court was followed by a Coordinate Bench of this Court in *Sheetal Suri v. Sukhdev Singh*², wherein the suit for partition as filed by the plaintiff was dismissed for non-joinder of the necessary parties. It was held that in partition suits, all co-sharers are necessary parties and their non-inclusion in the suit would render the suit as not maintainable.

29. In the instant suit, the plaintiff has failed to implead the other legal heirs, being the daughters of Smt. Krishna Wanti and Sh. Hansraj Gulati. Therefore, the present suit is bad for the non-joinder of necessary parties.

30. Accordingly, this issue is decided in favour of the defendants and against the plaintiff.

Issue no.(ii): Whether the suit has been properly valued for the purpose of court fee and appropriate court fees has been paid?~OPP

31. It is the plaintiff's submission that the suit is properly valued and appropriate court fees have been paid. It is further submitted that the defendants, who are also the petitioners in the Probate Case, have also valued the property in question at the same price.

² 2025 SCC OnLine Del 4719



32. It is the defendants' case that the suit properties are not properly valued. The market value of the aforesaid suit properties, as per paragraph no.20 of the amended plaint, is Rs. 45,00,000/-, which is incorrect.

33. It is stated that the plaintiff cannot reduce the market valuation of the properties, especially when initially one of the suit properties was valued at Rs.1,50,00,000/- by the plaintiff in the original plaint. Resultantly, the plaintiff has not paid the proper court fee on account of the undervaluation of the suit properties.

34. When the plaintiff filed the present suit in 2002, the property bearing *shop No. 39, along with first floor, and 2nd Floor, Krishna Market, Kalkaji, New Delhi- 110019*, was valued at Rs.1,50,00,000/- for the purpose of jurisdiction. After the plaint was amended in 2009, the plaintiff additionally sought partition of the property bearing no. *H-61, Kalkaji, New Delhi-110019*. However, the amended plaint was valued at Rs.45,00,000/- for the purposes of jurisdiction, for which a court fee of Rs.37,000/- has been paid by the plaintiff.

35. In my view, the suit properties have not been valued properly by the plaintiff. Subsequent addition of the property in respect of which the plaintiff seeks partition would increase the valuation of the suit. In the instant case, the plaintiff has reduced the valuation of the suit properties in the amended plaint. Therefore, it is held that the plaintiff has failed to value the suit properly and has failed to pay the appropriate court fees.

36. Hence, this issue is decided in favour of the defendants and against the plaintiff.



Issue no. (iii): Whether the Will dated 12.10.2001 purported to be made by Smt. Krishna Wanti is genuine and valid Will, if so, to what effect?

~OPD

37. The onus of proving this issue is on the defendants. The issue pertains to the genuineness and validity of the Will dated 12th October 2001 (hereinafter 'Will'), executed by Smt. Krishna Wanti (hereinafter 'testatrix'), bequeathing her entire estate in favour of her husband, Sh. Hansraj Gulati.

38. To prove the Will (Ex.DW-1/2), the defendants have relied on the evidence of DW-1, *i.e.* Sh. Sudesh Gulati, who is also the son of the testatrix and the defendant no.1 in the present suit. DW-1, in his evidence by way of affidavit, has deposed that the testatrix died on 30th September 2002 (death certificate exhibited as Ex. DW-1/3) and that the testatrix had executed a Will dated 30th September 2001 (Ex.DW-1/2).

39. DW-1 has deposed that the testatrix was the sole and absolute owner of the property bearing *Shop No. 39, Krishna Market, Kalkaji, New Delhi*. The said property was purchased from the funds of the husband of the testatrix, *i.e.* defendant no.1. By virtue of the said Will, the testatrix bequeathed the aforesaid property in favour of her husband, *i.e.* the defendant no.1. Therefore, on the demise of the testatrix, the defendant no.1 became the owner of the said property.

40. DW-1 has further deposed that the Will had been drafted on the instructions of the testatrix and the same was explained to her in Hindi language by her husband/defendant no.1. Thereafter, the testatrix signed the Will at Points 'A' and 'B' on the said Will in the presence of DW-1. After signing the Will, the testatrix handed over the Will to DW-1 for his signature. DW-1, being one of the attesting witnesses to the said Will, has signed at Point



‘B’. Thereafter, the Will was also signed by Mr. Nandlal Dua, the second attesting witness, at Point ‘C’.

41. DW-1 has also deposed that the testatrix was in good health and sound mind at the time of execution of the said Will.

42. The plaintiff has challenged the aforesaid Will on the ground that there is an anomaly in the mode of attestation adopted by the testatrix. It is the plaintiff’s contention that the Will bears the signatures of the testatrix in Hindi, whereas she could not write in Hindi. In a civil suit filed by the testatrix in the court of Senior Civil Judge, Delhi Civil, being Suit No.598 of 2002, the testatrix has filed documents that bear her thumb impression. Further, the plaintiffs have contended that at the time of execution of the Will, the testatrix was 83-84 years old and had been completely bedridden for a substantial period of time. Therefore, she was not mentally fit.

43. The plaintiff, in her cross-examination, has denied the existence of the Will executed by the testatrix. PW-1 has denied that signatures on the Will dated 12th October 2001 are of the testatrix, as the testatrix used to affix her thumb impression since 1991. Prior to 1991, she used to sign. However, the plaintiff admits that she has no document after 1991 in her possession that bears the thumb impression of her mother/testatrix.

44. It is further argued on behalf of the plaintiff that the second attesting witness to the Will has neither been called for evidence nor has any affidavit been filed on his behalf to show that the Will was signed by the testatrix in the presence of the said attesting witnesses.

45. In his cross-examination (recorded in TEST. CAS. 90/2014 as PW-1), Sh. Sudesh Gulati has stated that, at the time of execution of the Will, the testatrix was able to speak, write and her vision was intact. It is also stated



that the testatrix was able to read and write Hindi and was able to sign documents.

46. Sh. Sudesh Gulati (DW-1/PW-1 in TEST CAS.90/2014) has deposed in his cross-examination that the Will was signed in his presence and was signed on the same day when it was prepared. According to his testimony, none of the daughters of the testatrix were present at the time of execution of the Will.

47. In terms of the Will dated 12th October 2001, the testatrix had bequeathed and devised the property bearing *Shop No. 39, Krishna Market, Kalkaji, New Delhi*, to and in favour of her husband/the defendant no.1 (since deceased), absolutely and exclusively.

48. A hip bone fracture suffered by the testatrix may imply a lack of physical fitness but cannot imply that the testatrix was not in a sound state of mind at the time of execution of the Will. The plaintiff's submission that the testatrix was not in a sound state of mind at the time of execution of the Will has not been supported with any medical evidence. In view of the aforesaid, it cannot be stated that at the time of the execution of the Will, the testatrix was not in a sound state of mind.

49. No evidence has been placed on record to show that the testatrix used to put her thumb impression as a mode of attestation after 1991, nor has any document been placed to show that the testatrix used to affix her signature prior to 1991. In fact, PW-1 in her cross-examination has admitted that there is no document to show that the testatrix used to affix her signature prior to 1991.

50. The subject Will, which bears the signatures of the testatrix, was executed on 12th October 2001. It has already come in DW1's evidence that



the testatrix was able to read and write Hindi and was able to sign documents. The testimony of DW-1 remains unrebutted. The civil suit filed by the testatrix was attested using her thumb impression on 6th September 2002, about three (3) weeks before her death on 30th September 2002. It is possible that the testatrix might not have been able to put her signature in the aforesaid civil suit just three (3) weeks before her death. Therefore, it cannot be conclusively said that the testatrix always used to put her thumb impression and not her signature. In view of the aforesaid, the plaintiff's submission with regard to the anomaly in the mode of attestation of the Will is rejected.

51. As regards the contention of the plaintiff that the second attesting witness to the said Will was not called for his evidence in the present suit raises suspicious circumstances surrounding the execution of the Will, I am unable to accept the same. Under Section 68, Indian Evidence Act, 1872, only one (1) attesting witness is required to be examined, which has been satisfied in the present case as Sh. Sudesh Gulati, being one of the attesting witnesses to the aforesaid Will, has been examined.

52. In my view, the Will dated 12th October 2001, executed by Smt. Krishna Wanti has been duly proved in terms of Section 63 of the Indian Succession Act, 1925, read with Section 68, Indian Evidence Act, 1872.

53. The testatrix has bequeathed the property *Shop No. 39, Krishna Market, Kalkaji, New Delhi*, to her husband in terms of the Will executed by her. The Will specifically states that the property was purchased by the husband of the testatrix, *i.e.* Sh Hansraj Gulati, in her name. It is also stated that the testatrix has six (6) daughters and one (1) son, who are married and living a happy life in their matrimonial home.



54. There is nothing unnatural in the bequest made by the testatrix in favour of her husband to the exclusion of the plaintiff. Exclusion of the children, by itself, does not constitute a suspicious circumstance. It is not the plaintiff's case that the testatrix was estranged from her husband or that the disposition defied ordinary human conduct. In fact, it has come in evidence that the property that was the subject matter of the Will had been purchased from the funds of her husband. The bequest, viewed in the context of familial relationships, appears natural, rational, and consistent with normal human behaviour.

55. Reference may be made to the judgment of this Court in ***Khazan Singh v. State***³, wherein it was held that it is not unnatural or unusual for a spouse to bequeath his/her whole property to his/her partner to the exclusion of their progeny or other Class I legal heirs.

*“21. In so far as the exclusion of close relatives and Class-I heirs of the testatrix is concerned, a Will in favour of husband or vice-versa to the exclusion of others, stands on a different footing as compared to a Will in favour of other heirs or strangers. The concept of Will itself envisages preference to one over the other. **In our society it is not unnatural or unusual for husband or wife to bequeath his/her whole property to each other to the exclusion of their progeny. It is often resorted to keep up amity in the family and sometimes to ensure proper care, status and respect to the living spouse after the demise of the other.** Furthermore in the instant case, although contesting respondent has set up a case that the Will is not genuine, he has not produced any evidence in support thereof. In our opinion, therefore, the stated circumstance is not suspicious. In our view, facts in the instant case are clearly distinguishable from the facts prevailing in *Kalyan Singh v. Chhoti* (supra) and *Ram Pyari v.**

³ 1991 SCC OnLine Del 494



Bhagwant (supra) relied upon the learned counsel for the respondent.”

[emphasis supplied]

56. In the present case, after examining the entire evidence on record, no suspicious circumstances surrounding the Will have been made out by the plaintiff. The defendants, being the propounders of the Will, have been able to prove the same in accordance with Sections 63 and 68 of the Indian Evidence Act, 1872

57. Hence, issue no.3 in the suit is decided in the defendants’ favour and against the plaintiff.

Issue no.(iv): Whether the Will dated 30.5.2003, purported to be made by Sh. Hans Raj Gulati, deceased defendant no.1 is genuine and valid, if so, to what effect?~OPD

Issue no.(ii) in TEST CAS.90/2014: Whether the objections filed on behalf of objectors/respondents no. 2 to 7 are valid and maintainable?~OPD

Issue no.(iii) in TEST CAS.90/2014: Whether Will dated 30.05.2003 executed by Late Shri Hans Raj Gulati is his last and final testament?~OPP

58. The onus to prove the due execution of the Will dated 30th May 2003, executed by Late Sh. Hans Raj Gulati (hereinafter ‘testator’) rests upon the defendants, being the propounders of the Will.

59. To prove the subject Will (Ex. PW-2/1), the defendants examined Sh. Sudesh Gulati (PW-1 in TEST. CAS. 90/2014), who is the son of the testator and also one of the principal beneficiaries under the said Will, as well as Smt.



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Man Mohini (PW-2), one of the attesting witnesses. The defendants have also examined the Sub-Registrar (PW-3), before whom the said Will was registered.

60. In his evidence by way of affidavit, PW-1 has stated that the testator died on 21st December 2005 (death certificate is exhibited as Ex.PW-1/1). PW-1 has admitted that the subject Will bears the signature of the testator and the attesting witness, which are appended at points A to C.

61. Sh. Sudesh Gulati (PW-1) has deposed that the testator was in good health and sound mind at the time of execution of the said Will. PW-1 has also stated that the said Will is the last Will of the testator and he has not executed any other Will thereafter.

62. Sh. Sudesh Gulati (PW-1) has stated in his testimony that after the filing of the present suit, the relations between the plaintiff and the testator had become strained.

63. Sh. Sudesh Gulati (PW-1), in his cross-examination, has stated that the testator was able to read and write English, Hindi and Urdu without any aid.

64. In her evidence, PW-2, who is one of the attesting witnesses to the subject Will, has stated that she knew the testator for a long time and the testator treated her like his daughter. It is stated that on 30th May 2003, PW-2 visited the residence of the testator when the said Will had already been typed. When she reached there, PW-2 was introduced to one Mr. Nandlal Dua, who is a family friend of the testator and also the second attesting witness.

65. PW-2 has further deposed that the testator informed her that he got the subject Will typed after understanding its contents. Thereupon, PW-2 read the said Will to the testator in the presence of Mr Nand Lal Dua.



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66. PW-2 has clearly stated that the subject Will was signed by the testator at point 'A' on each page in the presence of PW-2 and Mr. Nand Lal Dua, *i.e.* the second attesting witness. PW-2 signed the said Will at point 'B' in the presence of the testator and the second attesting witness. Sh. Nand Lal Dua also affixed his signature at point 'C' in the presence of PW-2 and the testator. PW-2 has identified the original Will as Ex. PW-2/1.

67. PW-2 has also deposed that she, along with the second attesting witness, accompanied the testator to the office of the Sub-Registrar, Asaf Ali Road, New Delhi, for the registration of the aforesaid Will.

68. PW-2 has withstood the test of cross-examination, wherein she has affirmed the contents of her evidence affidavit.

69. PW-3, who is the Sub-Registrar before whom the subject Will was registered, brought the summoned record in respect of the said Will. The record brought by him matches with the Ex.PW-2/1, as exhibited in the judicial file. He has stated that the said Will was registered on 12th June 2003.

70. In his cross-examination, PW-3 has confirmed that both the attesting witnesses to the said Will and the testator were present on the date of registration of the said Will.

71. The respondents no.3 to 5 have filed their objections to the Probate Case. The main objection is with regard to the delay in filing the Probate Case after seven (7) years from the date of death of the testator on 12th December 2005. It is further contended that the aforesaid Will was executed at a stage when the testator was 92 years of age and was not in a sound state of mind. Further, it is alleged that the said Will was written in English, however, the testator only knew Urdu and could not read, write or understand English. It is submitted that the subject Will mentions about four (4) properties in his Will,



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out of which two (2) properties had already been sold by the testator during his lifetime.

72. In the evidence affidavit of PW-1, Ms. Kanta Sethi, *i.e.* the plaintiff/respondent no.5, it is stated that the testator was weak and frail during the years immediately preceding his death.

73. In her cross-examination, PW1 has denied the execution of the Will by the testator in favour of the defendant no.2.

74. The objectors have relied upon the evidence of R3W1 (Ms. Sunita Dua, respondent no.3 in TEST CAS 90/2014). In her evidence affidavit, it is stated that the probate in respect of the Will was filed by the petitioners after a delay of seven (7) years from the death of the testator. It is stated that the testator was an old man suffering from physical and mental illness and this had affected his eyesight and also his capacity to hear clearly. The condition had worsened immensely after the death of the testator's wife. It is stated that the Will has been executed by the testator at a time when his mental faculty and memory were quite feeble. It is further stated that the testator was not a well-educated person and the Will is prepared in English. It is not mentioned anywhere that the testator understood the contents of the Will. It is also stated that out of the four (4) properties bequeathed by the testator, two (2) properties had already been sold by the testator during her lifetime.

75. In her cross-examination, R3W1 has admitted that she does not have any medical records to show that the testator was not physically and mentally fit.

76. In the evidence affidavit of R3W2 (Mr. Ramesh Dua, who is the husband of the respondent no.3 in TEST. CAS. 90/2014), it has been stated that the agricultural land in Meham, District Rohtak and the property in



Malviya Nagar, being two (2) of the properties bequeathed by the testator through his Will, had already been sold by the testator during his lifetime and there was no reason for the said properties to have been mentioned in the Will.

77. However, in his cross-examination, R3W2 has admitted that he does not have any proof/document to confirm the sale of the said properties.

78. First, I shall deal with the objection raised by the respondents in the Probate Case with respect to the delay of seven (7) years in filing the probate petition.

79. It is the respondents' contention that the testator expired on 21st December 2005 and the petitioners filed the Probate Case in 2012, *i.e.* after seven (7) years from the death of the testator, therefore, the same is barred by limitation.

80. The petitioners have submitted that the probate petition has been filed within three (3) years from the date of amendment of the plaint in 2009.

81. The Indian Succession Act, 1925, prescribes no period of limitation for the grant of probate and letters of administration, and thus the residuary provision of Article 137 of Schedule to the Limitation Act, 1963 would apply. Article 137 is set out below:

137. Any other application for which no period of limitation is provided elsewhere in this Division.	Three years.	When the right to apply accrues.
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82. CS (OS) 2159/2002 was filed in 2002 and the plaint was amended in 2009 by the plaintiff to claim a share in her father's property. The defendants filed the amended written statement wherein they have propounded a Will dated 30th May 2003 executed by Sh. Hansraj Gulati. The plaintiff has denied the existence of the said Will in her amended replication. Therefore, the three



(3) year period would begin from the date the amendment in the plaint was allowed, *i.e.* 27th August 2009. The present probate petition has been filed in January 2012, which is within three (3) years.

83. Reference may be made to the judgment of the Supreme Court in ***Kunvarjeet Singh Khandpur v. Kirandeep Kaur***⁴, wherein it was upheld that a legal duty created by a Will is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives. In the facts of the present case, the petitioners filed the probate case within three (3) years from the date of the amended plaint and therefore the same is not barred by limitation.

84. The aforesaid decision has been followed by the Division Bench of this Court in ***Sanjeev Chadha v. D.P. Sachdeva***⁵, holding that the right to apply would accrue when it becomes necessary to apply which may not necessarily be within three (3) years from the death of the deceased death, and such right is a continuous right which can be exercised any time after the death of the deceased.

85. In view of the aforesaid position of law, in my view, the right to apply would accrue from the date when the plaint was amended in 2009. Accordingly, in terms of Article 137, Limitation Act, 1963, the probate petition has been filed within three (3) years from the time when 'right to apply accrues'.

86. The Objectors have not placed any medical evidence/document to show that the testator was not in a sound state of mind at the time of execution of the Will in 2003. It is evident from the evidence affidavit of PW-2, who is one

⁴ (2008) 8 SCC 463

⁵ 2025 SCC OnLine Del 6522



of the attesting witnesses to the subject Will, that the testator was of sound disposing mind and in good health at the time of signing the said Will.

87. The objection with respect to the testator not being a well-educated man cannot imply that the testator was not able to understand English. None of the objectors have placed any document to show that the testator could not understand English. In his statement, Sh. Sudesh Gulati (PW-1, who is also the son of the testator) has stated that the testator was able read and write English, Hindi and Urdu without any aid. In my view, this objection cannot be sustained in the absence of any evidence on record to support the same.

88. As regards the objections of the respondents with regard to the inclusion of four (4) properties in the said Will, despite the testator having sold two (2) out of those properties in his lifetime, the respondents have failed to place on record any documents to show that two (2) out of the four (4) properties, had been sold by the testator before the execution of the Will in 2003. It is possible that the testator had sold the aforesaid two (2) properties after the execution of the said Will, but before his death in 2005. The testator, being the owner of the aforesaid self-acquired properties, was fully competent to have sold such properties in his lifetime. However, in the absence of any evidence in this regard, this submission on behalf of the objectors is rejected.

89. On the basis of evidence on record, I conclude that the Will dated 30th May 2003, executed by Sh. Hansraj Gulati is valid and genuine. In my view, no suspicious circumstances surrounding the said Will have been made out.

90. The exclusion of the daughters of the testator and the execution of the Will for the sole benefit of two (2) of the legal heirs, *i.e.* the petitioners, by itself, is not a suspicious circumstance.



91. The testator has specifically mentioned in the said Will that he did not wish to bequeath any of his properties in favour of his daughters. The relevant clause of the said Will is set out below:

“AND whereas I have spent reasonably sufficient amount on the marriages of my above-named daughters and have been living with their respective husbands, and therefore, I do not wish to bequeath or devise any of my properties, moveable or immovable/assets, to them in any manner whatsoever;”

92. Reference may be made to the judgment of the Division Bench of this Court in *Hari Singh and Ors. v. The State and Ors.*⁶, wherein the disinheritance of a daughter was held to be not a suspicious circumstance and the bequest made in favour of the nephews of the testator, to the exclusion of the daughter of the testator, was held to be natural.

“31. Courts are not expected to be satisfied that a bequeathal is rational or not; what has to be considered is whether the bequest was so unnatural that the Testator could not have made it. It is the admitted position that the nephews were working together with their uncles and that they had been looked after by the uncles only. Indian society has traditionally been a patriarchal, where the succession to property by males had been in vogue to the detriment of females. It is only recently that legislative reforms, together with a social paradigm, shift in favour of the right of women has gained recognition. However, we have to be mindful of the fact that the Courts have to uphold the wishes expressed and not the wisdom behind the same. The Court cannot infuse its own value system on the testator. The Privy Council in Motibai Harmusjee Kanga - vs Jamsetjee Harmoonji Kanga, MANU/PR/0093/1923 : AIR 1924 PC 28 observed that "a man may act foolishly and even heartlessly; if he acts with full comprehension of what he is doing, the Court will not interfere with the exercise of his volition". For these reasons, we

⁶ MANU/DE/3341/2010



do not find the disinheritance of the Daughter/Objector as a suspicious circumstance.”

[emphasis supplied]

93. In the matter of appreciating the genuineness of execution of a Will, there is no place for the Court to see whether the distribution made by the testator was fair and equitable to all of his children.

94. In my view, the Will dated 30th May 2003, executed by Sh. Hansraj Gulati has been proved in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872.

95. Hence, issue no. (iv) is decided in favour of the defendants and against the defendants.

96. In view of the findings above, it is held that:

- a) The objections filed by the respondents no.2 to 7 cannot be sustained. Therefore, Issue no. (ii) in the Probate Case is decided in favour of the petitioners.
- b) The Will dated 30th May 2003, executed by Sh. Hans Raj Gulati has been duly proved as his last Will. Accordingly, the issue no.(iii) in the Probate Case is decided in favour of the petitioners.

Issue no. 3A. in TEST CAS.90/2014: Whether there was another Will of Hansraj Gulati(other than the privileged Will), if so, which date, month and year or the name of the legatee executed by him? ~OPR 3,5&7

Issue No. 3B. in TEST CAS.90/2014: Whether the Will referred in issue no.3A was torn in the family ceremony in the presence of



daughters of Shri Hans Raj Gulati, if so its consequences?~OPR 3,5

&7

97. The onus of proving the said issues was on the respondents/objectors. The contention of the objectors is that there was a subsequent Will executed by Sh. Hansraj Gulati, bequeathing his properties equally among his children. The original of the said Will of the testator was torn by Sh. Sudesh Gulati (petitioner no. 1), during the Barsi Ceremony of the testator on 21st November 2006.

98. R3W1, in her cross-examination, has stated that she did not see the torn Will and that she does not have any documentary evidence regarding the torn Will.

99. Smt. Kanta Sethi (respondent no.5 in TEST. CAS.90/2014) has deposed that she came to know from her sisters that the testator had made a new Will giving shares to all his children and the same was witnessed by the plaintiff and her sisters, who were present at the Barsi ceremony.

100. However, this contention is unsupported by any evidence. None of the respondents/objectors, who are the family members of the testator, lodged any complaint or took any legal step in this regard.

101. None of the objectors/respondents have seen or read the Will that was allegedly torn by Sh. Sudesh Gulati. The objectors have not even disclosed the date, month and year of execution of the torn Will. The respondent no.5 has deposed that she got to know about the torn Will from the other sisters, which is hearsay and therefore inadmissible. R3W1, in her cross-examination, has deposed that she did not see the torn Will. Since none of the objectors have seen or read the torn Will, the contents of the torn Will could not have



been ascertained. Therefore, the objectors cannot say that under the Will, properties were bequeathed by the testator equally in favour of all his children. 102. In my view, the respondents/objectors have failed to prove the existence of any torn Will.

103. Hence, the additional issues, being Issue no.3A and Issue no.3B in the Probate Case, are decided in favour of the petitioners and against the respondents.

Issue no. (v): Whether the suit properties bearing Shop No. 39, Krishna Market, Kalkaji, New Delhi-19 and House No. H-61, Kalkaji, New Delhi-19, are liable to partition, if so, to what effect?~OPP

104. In terms of the Will dated 12th October 2001, executed by Smt. Krishna Want, the property bearing *shop No. 39, along with first floor, and 2nd Floor, Krishna Market, Kalkaji, New Delhi- 110019* was bequeathed by the testatrix (plaintiff's mother) in favour of her husband, Sh. Hansraj Gulati. The said Will stands proved in view of my findings above in Issue no.3.

105. In terms of the Will dated 30th May 2003 executed by Sh. Hansraj Gulati, the property bearing *House No. H-61, Kalkaji, New Delhi-19*, and the aforesaid property in *Krishna Market* have been bequeathed by the testator (plaintiff's father) in favour of the defendants no.2 and 3, *i.e.* Sh. Sudesh Gulati and Sh. Sanjay Gulati.

106. Both the aforesaid properties are the subject matter of the Will executed by Sh. Hansraj Gulati. The said Will stands validly proved in view of my findings above in issue no.(iv).

107. Accordingly, the properties which are the subject matter of the Will of Sh. Hansraj Gulati, including the suit properties, are not liable to be partitioned and shall devolve upon the beneficiaries to the said Will.



108. Hence, this issue is decided in favour of the defendants and against the plaintiff.

Issue no.(vi): If issue no. (v) is decided in affirmative, what is the share of the plaintiff in the aforesaid properties?~OPP

109. In view of the findings in issue no.(v) above, the plaintiff does not have any share in the aforesaid properties.

Issue no.(i) in TEST CAS.90/2014: Whether petitioners are entitled for letter of administration/probate of WILL dated 30.05.2003 executed by Late Shri Hans Raj Gulati?~OPP

110. In view of the findings above, the objections filed by the objectors/respondents no.3, 4 and 5 are not sustainable. The petitioners, in the Probate Case, have made out a case for the grant of probate/letters of administration in respect of the Will dated 30th May 2003 executed by Sh. Hans Raj Gulati.

111. Accordingly, this issue is decided in favour of the petitioners and against the respondents.

RELIEF

112. In view of the discussion above, CS (OS) 2159/2002 is dismissed.

113. No order as to costs.

114. Decree sheet be drawn up.

115. TEST. CAS. 90/2014 is allowed.

116. The petitioners shall furnish Administrative Bond with one Surety to the satisfaction of the Registrar General of this Court.

117. Subject to the petitioner filing the requisite court fees and complying the aforesaid formalities, let the probate/letters of administration be issued



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upon the petitioners in respect of the Will dated 30th May 2003 executed by Late Sh. Hans Raj Gulati.

**AMIT BANSAL
(JUDGE)**

JANUARY 06, 2026
at