



2025:DHC:5014



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

% Judgment delivered on: 25.06.2025

+ **FAO 203/2008, CM APPL. 42472/2019, CM APPL. 23834/2022 & CM APPL. 27342/2022**

RANJAN RATTAN VADHERAAppellant

versus

STATE & ORS.Respondents

Advocates who appeared in this case

For the Appellant : Mr. Sanjiv Bahl, Mr. Pawas Agarwal and Mr. Amish Tiwari, Advocates.

For the Respondents : Mr. Naresh Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

INTRODUCTION

1. The present Appeal is directed against the order and judgment dated 29.04.2008 passed by the learned Additional District Judge ('**Impugned Order**') in Probate Case No. 96/2000, whereby the petition of the Appellant



2025:DHC:5014



for the grant of probate of the Will dated 20.09.1972 (**'Will'**) of Ms. Savitri Vadhera (**'Testatrix'**), has been dismissed with the observation that the Appellant had failed to establish the valid execution of the Will by the Testatrix.

FACTUAL BACKGROUND

2. The Testatrix passed away on 20.10.1972 and before her demise, she executed the Will bequeathing all her movable and immovable properties in favour of the Appellant, which was witnessed by Mr Raj Lal and Mr S.P. Joshi. The Testatrix was survived by her son - Mr. Ranjan Rattan Vadhera (the Appellant), her husband - Mr. Om Prakash Vadhera and her daughter - Ms. Nandita Bhalla. The Testatrix left behind an immovable property bearing number I-21, Kirti Nagar, New Delhi (**'Property'**).
3. After the demise of the Testatrix, the Appellant filed a Petition under Section 372 of the Indian Succession Act, 1925, for the grant of Succession Certificate regarding her debts and securities, which was granted in his favour vide Order dated 05.06.1974 passed by the Learned Sub-Judge, First Class, Delhi.
4. Thereafter, in the year 2000, the Appellant filed a Petition before the learned ADJ for the grant of Probate of the Will. Both the witnesses to the Will had expired by then. The said Probate Petition was objected to by the father of the Appellant, Mr. Om Prakash Vadhera. It was alleged that the Testatrix was not competent to execute the Will, as she was suffering from several diseases before her death, and that the said Will was a forged and fabricated document.



2025:DHC:5014



5. The Trial Court examined the Appellant and one Mr. Trilok Kumar, who is the son of one of the attesting witnesses, namely Mr. Raj Lal. Mr. Trilok Kumar deposed that the signature on the said Will as the attesting witness was that of his father.

6. In the absence of any proof that the signature on the Will was that of the Testatrix, the learned Trial Court dismissed the Probate Petition vide Impugned Order. It was further observed by the learned Trial Court that the signature of the second witness also could not be proved. Aggrieved by the said Impugned Order, the present Appeal has been preferred before this Court.

SUBMISSIONS BY THE APPELLANT:

7. Learned Counsel for the Appellant submitted that the learned Trial Court wrongly dismissed the Probate Petition on the ground that the Appellant failed to prove the signature of the Testatrix on the Will. It is further submitted that the Appellant in its evidence by way of affidavit, has duly stated that the said Will was executed by the Testatrix and that the Respondents never disputed the said execution.

8. It was submitted that the Will was duly proved by the Appellant in the proceedings before the learned Sub-Judge, First Class, Delhi, for the grant of Succession Certificate under Section 372 of the Indian Succession Act, 1925. It was further submitted that both the witnesses were examined in the said proceedings, however, the record of the said proceedings could not be obtained as there was fire in the Tis Hazari Courts.

9. It was submitted that the Will filed before this Court has the endorsement “**Original Seen Returned dated 15.3.1974**”, which was made



2025:DHC:5014



by the learned Sub-Judge and, therefore, it is established that the Will was duly proved in the proceedings for grant of Succession Certificate.

10. It was submitted that since both the attesting witnesses had expired, the Appellant examined the son of one of the attesting witnesses, who identified his father's signature on the said will as the attesting witness. Therefore, the requirement provided for under Section 69 of the Indian Evidence Act, 1872 stands satisfied.

11. It was submitted that the finding of the learned Trial Court is contrary to the law as Section 69 of the Indian Evidence Act, 1872 only requires the attestation of one attesting witness to be proved, and there is no requirement of proving the attestation of the second witness.

12. It is submitted that Respondent No. 3 never filed any objection to the Probate Petition, in addition to lodging no objection to the grant of Succession Certificate under Section 372 of the Indian Succession Act, 1925.

13. In view of the foregoing submissions, it was prayed that the present Appeal be allowed.

SUBMISSIONS BY THE RESPONDENTS:

14. Learned Counsel for the Respondents submitted that the Testatrix left no Will bequeathing her properties. It is further submitted that the Appellant has failed to prove the valid execution of the Will by the Testatrix. It is also submitted that the Testatrix was not competent to execute the said will as her mental and physical faculties were highly affected at the time of the alleged execution of the Will.



2025:DHC:5014



15. It was submitted that the requirements of Section 68 of the Indian Evidence Act, 1872 and Section 63 of the Indian Succession Act, 1925 were not satisfied in the present case as the signatures of the Testatrix and the witnesses could not be verified as per the requirements of the said provisions.

16. It was submitted that Mr. Trilok Kumar, son of Mr. Raj Lal, who was one of the attesting witnesses, was silent on the aspect of attestation of the signature of the Testatrix on the will document, in addition to the signature of the second witness, Mr. S.P. Johi on the Will document. It was further submitted that Mr. Trilok Kumar is not a witness to the execution of the said Will document. Therefore, the evidence given by Mr. Trilok Kumar was not sufficient to satisfy the requirements of Section 69 of the Indian Evidence Act, 1925.

17. It is submitted that the statement that the learned Sub-Judge has approved the will on the basis of an endorsement “**Original Seen Returned dated 15.3.1974**” is incorrect as the same cannot be proved as valid, having any link to the proceedings for grant of Succession Certificate to the Appellant.

18. In view of the foregoing submissions, it was prayed that the instant Appeal before this Court be dismissed.

ANALYSIS AND FINDINGS:

19. Heard the learned Counsels for the Parties and perused the material placed on record. Considering the facts and circumstances, which led to the filing of the instant Appeal, the primary issue before this Court for



2025:DHC:5014



adjudication is regarding the validity of the alleged execution by the Testatrix of the Will dated 20.09.1972.

20. Before delving into the merits of the case, it is imperative at this stage to discuss the applicability of Section 68 and 69 of the Indian Evidence Act, 1872 in the present case. The said provisions read as under:

“68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

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

xxxxxxx

“69. Proof where no attesting witness found.—If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person.”

21. In the case of ***Moturu Nalini Kanth v. Gainedi Kaliprasad*** 2023 SCC OnLine SC 1488, the Supreme Court summarised the law on the applicability of Sections 68 and 69 of the Indian Evidence Act, 1872 as under:

*“24. Earlier, in ***Bhagat Ram v. Suresh***⁶, this Court observed as under:*

‘12. According to Section 68 of the Evidence Act, 1872, a document required by law to be attested, which a Will is, shall



2025:DHC:5014



not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if available to depose and amenable to the process of the court. The proviso inserted in Section 68 by Act 31 of 1926 dispenses with the mandatory requirement of calling an attesting witness in proof of the execution of any document to which Section 68 applies if it has been registered in accordance with the provisions of the Indian Registration Act, 1908 unless its execution by the person by whom it purports to have been executed is specifically denied. However, a Will is excepted from the operation of the proviso. A Will has to be proved as required by the main part of Section 68.'

25. Thereafter, in *Benga Behera v. Braja Kishore Nanda*, this Court held thus:

'40. It is now well settled that requirement of the proof of execution of a will is the same as in case of certain other documents, for example gift or mortgage. The law requires that the proof of execution of a will has to be attested at least by two witnesses. At least one attesting witness has to be examined to prove execution and attestation of the will. Further, it is to be proved that the executant had signed and/or given his thumb impression in presence of at least two attesting witnesses and the attesting witnesses had put their signatures in presence of the executant.'

26. Much more recently, in *Ashutosh Samanta (Dead) by LRs. v. SM. Ranjan Bala Dasi*, this Court noted that where the attesting witnesses died or could not be found, the propounder of the Will is not helpless, as Section 69 of the Evidence Act would be applicable. On facts, this Court found that others who were present at the time the testator and the two attesting witnesses signed the Will were examined and the Will was also supported by a registered partition deed which gave effect to it. Considering these circumstances in totality and as none of the heirs of the testator contested the grant of letters of administration, this Court held that there could be only one conclusion, i.e., that the Will was duly executed and the propounder was successful in proving it. Notably, there was no contest to the Will and that is a distinguishing factor when compared with the case on hand.



2025:DHC:5014



27. On the same lines, in *Ved Mitra Verma v. Dharam Deo Verma*, having found that the attesting witnesses had died, this Court held that the examination of the Sub-Registrar, who had registered the Will and who spoke of the circumstances in which the attesting witnesses as well as the testator had signed on the document, would be sufficient to prove the Will in terms of Section 69 of the Evidence Act.

28. However, in *Apoline D' Souza v. John D' Souza*, this Court had noted that Section 68 of the Evidence Act provides for the mode and manner through which execution of a Will is to be proved and held that proof of attestation of a Will is a mandatory requirement. Referring to the earlier judgment in *Naresh Charan Das Gupta v. Paresh Charan Das Gupta*, which held to the effect that merely because the witnesses did not state that they signed the Will in the presence of the testator, it could not be held that there was no due attestation and it would depend on the circumstances elicited in evidence as to whether the attesting witnesses signed in the presence of the testator, this Court held that the mode and manner of proving due execution of the Will would indisputably depend upon the facts and circumstances of each case, and it is for the propounder of the Will to remove the suspicious circumstances.

29. In *Bhagavathiammal v. Marimuthu Ammal*, a learned Judge of the Madurai Bench of the Madras High Court observed that the difference between Section 68 and Section 69 of the Evidence Act is that, in the former, one attesting witness, at least, has to be called for the purpose of proving execution and in the latter, it must be proved that the attestation of one attesting witness, at least, is in his handwriting and the signature of the person executing the document is in the handwriting of that person. It was rightly observed that Section 69 of the Evidence Act does not specify the mode of such proof and, in other words, the handwriting can be spoken to by a person who has acquaintance with the handwriting or the signature can be proved by comparison with the admitted handwriting or signature of the person executing the document.”

22. Therefore, Section 68 the Indian Evidence Act, 1872 requires that at least one attesting witness must be called to prove the execution of a Will. However, if the attesting witnesses are dead or could not be found, recourse under Section 69 the Indian Evidence Act, 1872 may be taken, wherein the



2025:DHC:5014



requirement of examination of at least one attesting witness is dispensed with. Section 69 the Indian Evidence Act, 1872 lays down two pre-conditions for proving the execution of a Will by the testator – *firstly*, it must be proved that the attestation of at least one attesting witness is in his handwriting; and *secondly*, the signature of the person executing the Will should be in that person's handwriting. It is also clear that Section 69 the Indian Evidence Act, 1872 does not prescribe any specific mode of proof and the conditions provided under it for its application can be satisfied based on the facts and circumstances of the case.

23. Adverting to the merits of the present case, it is undisputed that both the attesting witnesses to the Will are dead. Therefore, in order to prove the execution of the Will, the pre-conditions under Section 69 the Indian Evidence Act, 1872 must be satisfied. In other words, it must be proved that the *firstly*, the signature of one of the attesting witnesses is in his handwriting; and *secondly*, the signature of the Testatrix on the Will document is in her handwriting.

24. The only witness examined by the Appellant to prove the execution of the Will in question is Mr. Trilok Kumar, son of Mr. Raj Lal, who was one of the attesting witnesses of the said Will. Mr. Trilok Kumar deposed that the Will document bears the signature of Mr. Raj Lal, and that he could identify the same as he had seen his father sign multiple times previously. The said witness also observed that the Will was genuine, without making any express statement on the genuineness of the signature of the Testatrix on the Will document. Therefore, based on the evidence given by Mr. Trilok Kumar, it can be established that the signature of Mr. Raj Lal on the Will document was in his handwriting. Hence, the first pre-condition under Section 69 the Indian Evidence Act, 1872 stood satisfied in the present case.



2025:DHC:5014



25. However, whether the signature of the Testatrix on the Will document was made in her handwriting or not is required to be proved. It is the Appellant's case that - *firstly*, the Succession Certificate was granted by the learned Sub-Judge after examining the attesting witnesses of the Will; and *secondly*, the learned Sub-Judge had endorsed the Will document as original.

26. The following factors are relevant to evaluate whether signature of the Testatrix on the Will document was made in her handwriting:

- a) The Testatrix executed the said Will on 20.09.1972. She passed away a month later on 20.10.1972 and it is undisputed that she was suffering from some health conditions before her demise.
- b) The Appellant admitted in his cross-examination that he was not present during the execution of the said Will by the Testatrix.
- c) The Appellant has failed to draw a co-relation between the grant of Succession Certificate and the valid execution of the Will.
- d) The Appellant submitted that the attesting witnesses were examined in the proceedings before the learned Sub-Judge in the proceedings for grant of succession certificate. However, the same remains uncorroborated because the record of the said proceedings could not be produced as they were burnt due to fire in Tis Hazari Court as per the Appellant's version.
- e) The Appellant submitted that the learned Sub-Judge in the proceedings for grant of Succession Certificate had endorsed the Will in question as original. After perusing the said document, the Appellant's contention remains unsubstantiated as *firstly*, the Appellant has failed to establish any between the alleged endorsement



2025:DHC:5014



on the said document and the grant of Succession Certificate; and *secondly*, the veracity of the said document still remains under question as it does not have any seal or stamp of the Court of Sub-Judge concerned.

27. In view of the above facts and circumstances, the second precondition under Section 69 of the Indian Evidence Act, 1872 is not satisfied in the present case as it cannot be established that the signature on the said Will document is that of the Testatrix herself.

28. As the Appellant has failed to discharge the burden of proving the valid execution of the Will in question, there is no infirmity with the Impugned Order. Accordingly, the present Appeal is hereby dismissed. Pending Application(s), if any, also stand disposed of.

TEJAS KARIA, J

JUNE 25, 2025/'A'

Click here to check corrigendum, if any