



2025:DHC:5012



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

% Judgement delivered on: 25.06.2025

+ **FAO 119/2021 & CM APPL. 12338/2021**

SANJEEV MALHOTRA

.....Appellant

versus

STATE AND ORS.

.....Respondents

Advocates who appeared in this case

For the Appellant : Mr. Kirti Uppal, Senior Advocate with Mr. Siddhant Asthana & Mr. Siddhartha Negi, Advocates.

For the Respondents : Mr. Manashwy Jha, Advocate [Panel Counsel (Civil) GNCTD] for R-1
Mr. R.K. Dhawan, Ms. Nisha Dhawan, Mr. V.K. Teng, Mr. NamanKumar Thakur, Mr. Purshottam Singh & Mr. Arun Kumar Singh, Advocates for R-2 for R-2.

CORAM:

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The present appeal has been preferred by Sanjeev Malhotra, the Appellant herein, assailing the judgment and order dated 09.03.2021 ('**Impugned Order**') passed by the learned Additional District Judge-



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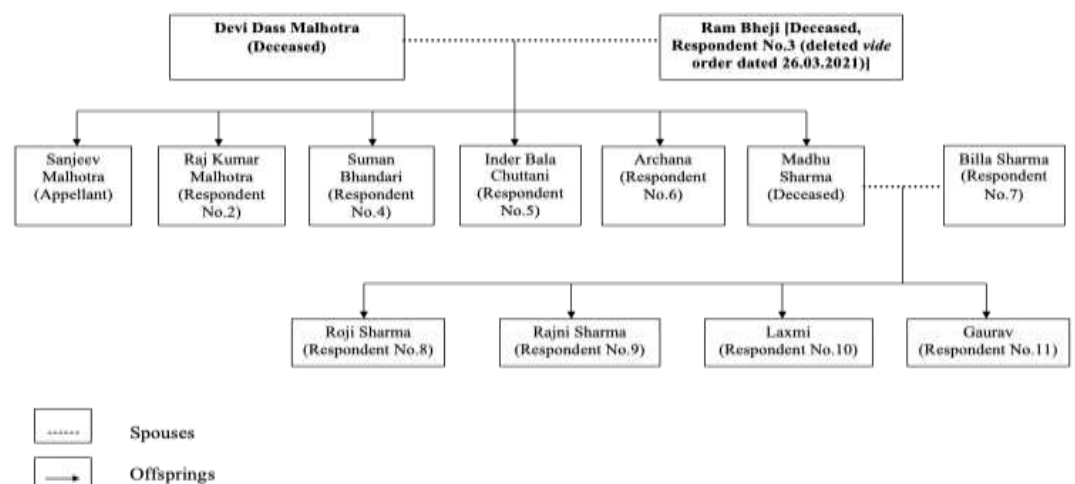


02, West District, Tis Hazari Courts, New Delhi, in Probate Case No. 16006/2016 (**‘Trial Court’**).

2. By way of the Impugned Order, the learned Trial Court granted Letters of Administration in favour of Respondent No. 2, pursuant to a petition filed under Section 278 of the Indian Succession Act, 1925, in respect of an unregistered Will dated 07.01.2008 (**‘2008 Will’**), allegedly executed by Late Shri Devi Dass Malhotra (**‘Testator’**). As per the 2008 Will, the entire property bearing municipal number 40/1A, Ashok Nagar, Tilak Nagar, New Delhi admeasuring approximately 100 square yards (**‘Property’**) was bequeathed exclusively in favour of Respondent No. 2 to the exclusion of the other legal heirs.

FACTUAL MATRIX

3. The Testator passed away on 07.03.2008. The Parties to the present Appeal are the legal heirs of the Testator. The pedigree showing the legal heirs of the Testator is as under:





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4. The Appellant is the younger son of the Testator and Respondent No. 2 is the elder son. Respondent Nos. 4, 5 and 6 are the daughters of the Testator. Respondent Nos. 7 to 11 are the legal heirs of the predeceased daughter, Late Madhu Sharma, of the Testator. Respondent No. 3 was the wife of the Testator and the mother of the Appellant and Respondent Nos. 2, 4, 5 and 6. Respondent No. 3 passed away on 05.04.2016 during the pendency of the probate proceedings and was deleted from the array of parties *vide* order dated 26.03.2021 passed by this Court in this Appeal.

5. The Property was inherited by the Testator from his father, Shri Ram Lal Malhotra. The Property comprises both residential and commercial components, including a ground floor and a 1st (first) floor. The ground floor originally consisted of 4 (four) shops and a residential portion.

6. During the lifetime of the Testator, 2 (two) of the 4 (four) shops were sold on 23.04.1997. At the time of filing the Probate Petition, 1 (one) of the remaining 2 (two) shops were in possession of Respondent No. 2, and the other was in possession of Respondent No. 3. The remaining residential portion of the ground floor was occupied by Respondent No. 2 and his family members. The entire 1st (first) floor was in the possession of the Appellant.

7. The 2008 Will, as propounded by Respondent No. 2, allegedly bequeaths the shop measuring 7.6 feet x 8 feet on the ground floor and the entire first floor to Respondent No. 2, while the remaining ground floor portion was bequeathed to the Appellant. The said Will also provided that any future construction on the upper floors, namely the 2nd (second) and 3rd (third) floors, was to be undertaken jointly by the Appellant and Respondent No. 2 and was to be equally divided between them.



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8. The Appellant disputes the authenticity and genuineness of the 2008 Will. It is the case of the Appellant that Respondent No. 2 was debarred by the Testator from his estate, as evidenced by a public notice published in the newspaper 'Rashtriya Sahara' on 06.12.1998. This material fact was not disclosed by Respondent No. 2 in the Probate Petition filed before the learned Trial Court. The Appellant further relies upon a registered Will dated 19.02.2002 ("**2002 Will**"), under which the ground floor of the Property was allegedly bequeathed jointly to the Appellant and Respondent No. 3. In support of this claim, the Appellant has also placed reliance upon an Agreement to Sell, a General Power of Attorney, an Affidavit, and other supporting documents stated to have been executed by the Testator.

9. Prior to the filing of the Probate Petition on 11.01.2016, several registered Relinquishment Deeds were executed in favour of the Appellant. Respondent No.3 executed a Relinquishment Deed dated 09.01.2015, relinquishing her share in the Property in favour of the Appellant. Similarly, Respondent Nos.4, 5 and 6 executed registered Relinquishment Deeds on 01.11.2014, 10.10.2014 and 22.12.2015 respectively thereby relinquishing their respective shares in the Property in favour of the Appellant.

10. Prior to the filing of the present Appeal, the Appellant instituted Civil Suit No. 38/2015 titled "*Sanjeev Malhotra v. Raj Kumar Malhotra*" before the Court of the learned Civil Judge, West District, Tis Hazari Courts, New Delhi. In the said Suit, the Appellant sought a decree of mandatory injunction and possession in respect of the shop situated on the ground floor of the Property, relying on the registered 2002 Will and the accompanying documents. The Suit was dismissed by judgment dated 30.05.2019.

11. The Appellant has alleged that the unregistered 2008 Will was fabricated and brought into existence by Respondent No.2 from his exclusive



custody, without the knowledge of the other legal heirs. It is further alleged that the 2008 Will records the incorrect age of the Testator as 66 years, whereas the admitted age at the relevant time was 74 years. The 2008 Will is written in Hindi, while it is contended that the Testator was illiterate and was conversant only with the Urdu language. Additionally, the attesting witnesses to the 2008 Will were strangers to the family and were not known to the legal heirs.

12. The Appellant also relied on the opinion of a handwriting expert, who examined the signatures on the 2008 Will. According to the expert's report, the signatures appeared shaky and were inconsistent with the admitted signatures of the Testator as appearing on the registered 2002 Will.

13. In the Probate Petition, Respondent No. 2 averred that the 2008 Will was the first and last Will of the Testator and was duly executed by the Testator in the presence of 2 (two) attesting witnesses, namely Shri Mohd. Akbar and Shri Gurdeep Singh Dua, Advocate. It was further stated that the 2008 Will bequeathed the shop measuring 7.6 feet x 8 feet on the ground floor and the entire 1st (first) floor of the property to Respondent No. 2, while the remaining ground floor portion was bequeathed to the Appellant.

14. Respondent No.2 also submitted that it was the wish of the Testator that the Appellant and Respondent No. 2 would mutually develop the 2nd (second) and 3rd (third) floors of the Property, if permissible under applicable building regulations, and that such construction would be shared equally.

15. It was further averred that the Appellant and other legal heirs were fully aware of the execution of the 2008 Will, and that even prior to the execution of the 2008 Will, the Parties were already in possession of the respective portions as eventually bequeathed in the 2008 Will.



16. Respondent No.2 alleged that the Appellant had initiated Civil Suit No. 38/2015 to harass Respondent No. 2 and to illegally claim possession over the portion bequeathed to Respondent No. 2. It was asserted that the said Suit was based on forged and fabricated documents and was pending adjudication at the time of filing the Probate Petition. Respondent No.2 submitted that there was no legal impediment in the grant of Letters of Administration in respect of the 2008 Will.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT

17. Respondent No.2, who was the Petitioner before the learned Trial Court, examined himself as PW-1 and filed his Evidence Affidavit, which was exhibited as Ex. PW-1/A. He relied upon the Death Certificate of the Testator, exhibited as Ex. PW-3/1, and placed on record the unregistered 2008 Will, which was marked as 'Mark-A'.

18. Respondent No.2 also examined Shri Gurdeep Singh Dua, Advocate, as PW-2, who deposed that he was one of the attesting witnesses to the 2008 Will. PW-2 stated that the Will was brought to him already written in Hindi by the Testator, was read over and explained to the Testator, and that it was signed by the Testator in his presence and in the presence of the other attesting witness, Shri Mohd. Akbar. PW-2 further stated that both attesting witnesses signed the 2008 Will in the presence of each other and the Testator, who was in a sound state of mind and health at the time.

19. The Appellant, who was Respondent No.3 before the learned Trial Court, examined himself as R3W1 and filed his Evidence Affidavit asserting his ownership over the Property based on a registered 2002 Will. He also referred to an Agreement to Sell, General Power of Attorney, and other related documents to support his claim. The Appellant further relied on a



Relinquishment Deed executed by Respondent No. 3 (his mother) in his favour.

20. The Appellant examined Mr. B.N. Srivastava, a handwriting and fingerprint expert, as R3W2. The expert opined that the signature on the 2008 Will did not match the Testator's known signatures appearing on a photocopy of the registered 2002 Will. The Appellant also examined R3W3, who produced and placed on record the certified copies of the pleadings and documents filed in Civil Suit No. 38/2015, earlier instituted by the Appellant against Respondent No. 2.

21. The learned Trial Court found the testimony of PW-2, Shri Gurdeep Singh Dua, being 1 (one) of the attesting witnesses to the 2008 Will, to be credible and legally sufficient. Relying on Section 68 of the Indian Evidence Act, 1872, the learned Trial Court held that the Will had been properly attested, and that only one attesting witness needed to be examined to prove its execution.

22. The learned Trial Court rejected the handwriting expert's opinion (R3W2), on the ground that the comparison was made between the disputed 2008 Will and a photocopy of the registered 2002 Will, rather than its original. It held that such a comparison lacked evidentiary reliability and could not be given weight.

23. The learned Trial Court also noted that the Appellant's conduct in previous civil proceedings contradicted his stand. In Civil Suit No. 38/2015, the Appellant had claimed ownership of the property on the basis of having purchased it from his father, rather than on the basis of the 2002 Will. The learned Trial Court viewed this contradiction as undermining the Appellant's reliance on the earlier 2002 Will.



24. Regarding the delay in filing the Probate Petition [8 (eight) years after the Testator's death], the learned Trial Court accepted the explanation that Respondent No.2 only propounded the 2008 Will after the Appellant initiated adverse civil proceedings in 2015. The delay was, therefore, held to be reasonably justified.

25. The learned Trial Court acknowledged the 1998 newspaper disownment notice, but found that familial estrangement was not permanent, and that it was plausible for the Testator to have reconciled with Respondent No. 2 before executing the 2008 Will.

26. The learned Trial Court also observed that the 2008 Will made a near-equal distribution of property between the Appellant and Respondent No.2, which rendered the bequest not unnatural or suspicious. It rejected the contention that the 2008 Will was fabricated solely because it was unregistered and came from the custody of the beneficiary.

27. Accordingly, the learned Trial Court held that Respondent No. 2 had successfully discharged the onus of proving the 2008 Will, and that suspicious circumstances were satisfactorily explained and removed.

SUBMISSIONS BY THE APPELLANT

28. Mr. Kirti Uppal, learned Senior Counsel appearing on behalf of the Appellant, submitted that the learned Trial Court erred in granting Letters of Administration in favour of Respondent No.2 on the basis of an unregistered 2008 Will. It was argued that the said 2008 Will originated solely from the custody of Respondent No. 2, was propounded nearly 8 (eight) years after the demise of the Testator and was completely unknown to the Appellant and other legal heirs during the lifetime of the Testator.



29. It was submitted that the Appellant had filed objections before the learned Trial Court and was supported by the other legal heirs. In these circumstances, the burden was upon Respondent No. 2 to establish the due execution, authenticity, and voluntariness of the 2008 Will, which had not been discharged.

30. Learned Senior Counsel for the Appellant further submitted that the 2008 Will was surrounded by suspicious circumstances, including the significant delay of nearly 8 (eight) years in its propounding, the absence of any explanation regarding its late emergence, and the inconsistent position adopted by Respondent No.2 in earlier proceedings.

31. It was also submitted that the 2008 Will made no reference to an earlier registered 2002 Will, under which the ground floor of the Property had been bequeathed jointly to the Appellant and their mother (Respondent No. 3). The failure to acknowledge or revoke the earlier 2002 Will vitiated the probative value of the subsequent unregistered 2008 Will.

32. Learned Senior Counsel for the Appellant further submitted that the Testator had, during his lifetime, publicly disowned Respondent No.2 by publishing a public notice to that effect in the 'Rashtriya Sahara' newspaper dated 06.12.1998. This act of formal disinheritance, which reflected the Testator's hostility towards Respondent No. 2 was not disclosed in the Probate Petition, and its omission was submitted to be material and deliberate.

33. It was further submitted that the Appellant's right over the Property had been reinforced by multiple registered Relinquishment Deeds executed in his favour by other legal heirs. Specifically, Respondent No.3 (since deceased) executed a registered Relinquishment Deed dated 09.01.2015, and Respondent Nos.4, 5 and 6 executed similar deeds in 2014 and 2015



respectively. These deeds were prior in time to the institution of the Probate Petition and recognised the Appellant's claim based on the 2002 Will.

34. Learned Senior Counsel for the Appellant emphasised that none of the family members were aware of the existence of the 2008 Will, and that the attesting witnesses were unknown to them, which was admitted by Respondent No.2 during his cross-examination before the learned Trial Court. The secrecy surrounding the document of 2008 Will and the fact that it was produced from the sole custody of Respondent No.2 casts serious doubt on its authenticity.

35. It was further submitted that the attesting witness PW-2, Advocate Gurdeep Singh Dua, deposed that the Testator had brought a handwritten Will in Hindi to him, which PW-2 then translated into English. However, Respondent No.2 admitted that the Testator was only literate in Urdu. The contradiction between the languages of the 2008 Will and the Testator's linguistic capacity remained unexplained.

36. Learned Senior Counsel for the Appellant additionally pointed out that the age of the Testator had been incorrectly mentioned as 66 years in the 2008 Will, when, in fact, he was 74 years old at that time. It was submitted that such an error, if the document was truly authored by the Testator, was inconsistent with the assertion that it was made with full knowledge and understanding.

37. Learned Senior Counsel for the Appellant relied upon the opinion of a handwriting and fingerprint expert (R3W2), who opined that the signature appearing on the 2008 Will was forged and did not match the admitted signature of the Testator appearing on the registered 2002 Will. It was submitted that the learned Trial Court erred in disregarding this report solely



on the ground that the comparison had been made using a photocopy, despite the 2002 Will having been accepted in evidence in Civil Suit No. 38/2015.

38. It was further argued that Respondent No.2 had not produced the 2008 Will in Civil Suit No. 38/2015 filed by the Appellant, nor did he rely upon it in his written statement. Instead, he claimed ownership through a different set of documents, including an Agreement to Sell, General Power of Attorney, and an Affidavit. The 2008 Will was only introduced after the dismissal of the said Suit, which demonstrated that the 2008 Will was an afterthought.

39. It was also submitted that the learned Trial Court committed a legal error in granting Letters of Administration simpliciter without annexing the Will, in contravention of Section 232 of the Indian Succession Act, 1925. Learned Senior Counsel for Appellant submitted that in a case involving a testamentary document, administration could only be granted “*with the Will annexed*,” and not otherwise.

40. Learned Senior Counsel for the Appellant submitted that an application under Section 340 of the Code of Criminal Procedure, 1973 had been moved before the learned Trial Court seeking initiation of proceedings against Respondent No.2 for perjury and suppression of material facts. In the face of such serious allegations, the Trial Court, it was argued, ought to have exercised prudence before granting Letters of Administration.

41. Finally, it was submitted that the appeal was maintainable under Section 299 of the Indian Succession Act, 1925 read with Section 104 of the Code of Civil Procedure, and that the Impugned Order, being based on suppression of facts and a misappreciation of evidence, deserved to be set aside.



42. The judgments relied upon by the Appellants are as under:
- a. ***Sudershan Lal Maini v. Virender Kumar Maini & Ors***,
2012SCCOnLineDel 862: (2012) 187 DLT 414 (DB) [¶
27, 28, 34]
 - b. ***Ashish Virmani v. State***, **2005 SCC OnLine Del 701 :**
ILR (2005) 2 Del 284 [¶ 20, 42, 44, 45]
 - c. ***Smt. Lalita Sharma v. Smt. Sumitra Sharma***, **2011 SCC**
OnLine Del 1210 : (2011) 122 DRJ 538 : (2011) 178
DLT 358 : (2011) 2 Civ LT 77[¶ 18, 30, 33]
 - d. ***Vijay Sethi & Ors. v. State & Ors.***, **2014 SCC OnLine**
Del 3432 :(2014) 5 AIR Del R 155 [¶ 10]

SUBMISSIONS BY THE RESPONDENTS

43. Mr. Manashwy Jha, Advocate [Panel Counsel (Civil) GNCTD] appeared on behalf of the Respondent No.1 and Mr. R.K. Dhawan appeared on behalf of Respondent No. 2.

44. Learned Counsel for Respondent No. 2 submitted that the present Appeal was not maintainable and deserved outright dismissal. It was argued that the Appellant had merely reagitated issues that were fully considered and adjudicated by the learned Trial Court. The Impugned Order was stated to be well-reasoned and based on a thorough appreciation of the evidence.

45. It was submitted that the 2008 Will was validly executed by the Testator and the bequest made therein reflected his clear testamentary intent to divide the property between Respondent No. 2 and the Appellant. It was further submitted that the Appellant's claim that the 2008 Will was unknown to the family members was incorrect, as the factum of its execution was well within the knowledge of all concerned.



46. The Respondent No.2 asserted that the Appellant had earlier filed Civil Suit No. 38/2015 claiming title to the ground floor of the Property based on documents including an Agreement to Sell, General Power of Attorney, Affidavit, payment receipt, and a registered 2002 Will. It was contended that these documents were forged, fabricated, and created for the purpose of litigation and lacked evidentiary value. The inconsistency between the Appellant's pleadings in the said Suit and his objections in the Probate Petition was also emphasised.

47. It was submitted that the Appellant had failed to prove the authenticity of the documents relied upon in Civil Suit No. 38/2015, and the said Suit was dismissed.

48. It was further argued that the Relinquishment Deeds executed in favour of the Appellant by the other legal heirs did not mention any alleged purchase of the ground floor of the Property by the Appellant and Respondent No.3. This omission cast serious doubt on the Appellant's claim of title through sale.

49. Learned Counsel for Respondent No.2 submitted that the Appellant's reliance on a photocopy of a public notice allegedly published by the Testator in 1998, disowning Respondent No. 2, was misconceived. It was argued that the said document had not been proved in accordance with law and was marked only for identification as 'Mark-A'. It was also submitted that there was no evidence to show that the Testator had indeed authorised such publication, and the same could have been orchestrated by the Appellant himself.

50. On the question of the 2008 Will's execution, it was submitted that there was no requirement in law for the attesting witnesses to be family members of the Testator. The attesting witness, Advocate Gurdeep Singh



Dua (PW-2), had categorically deposed that the Will was signed by the Testator in his presence and in the presence of another attesting witness. Learned Counsel for Respondent No.2 submitted that the learned Trial Court had rightly accepted the validity of the 2008 Will, in the absence of any cogent evidence to the contrary.

51. With respect to the contention that the 2008 Will was written in Hindi while the Testator allegedly knew only Urdu, it was submitted that such a discrepancy was immaterial as it was required to consider the 2008 Will as executed, not any preliminary draft or language of origin. Moreover, PW-2 had deposed that the contents of the Will that were explained to the Testator prior to the execution.

52. As to the expert opinion relied upon by the Appellant, it was submitted that the handwriting expert compared the signature on the 2008 Will with that appearing on a photocopy of the registered 2002 Will, and not with the original. On this ground, learned Counsel for Respondent No.2 submitted that the expert opinion was unreliable and had been rightly disregarded by the learned Trial Court.

53. It was further submitted that the bequest made under the 2008 Will demonstrated the Testator's affection for both the sons, and that the division of property between Respondent No. 2 and the Appellant was broadly equal. Thus, no allegation of undue influence or exclusion of natural heirs could be sustained.

54. It was also submitted that the Appellant had failed to discharge the onus placed upon him after having raised objections to the 2008 Will. The issues framed by the learned Trial Court based on the Appellant's objections were answered on the basis of the evidence led, and the findings recorded did not need interference.



55. Accordingly, the learned Counsel for Respondent No.2 prayed for dismissal of the Appeal, submitting that no error - legal or factual, had been demonstrated in the Impugned Order needing any interference by this Court.

ANALYSIS AND FINDINGS:

56. This Appeal arises out of the Probate Petition initiated under Section 278 of the Indian Succession Act, 1925, wherein Respondent No.2 sought the grant of Letters of Administration with the 2008 Will annexed. It is a well settled principle of testamentary jurisprudence that such proceedings are in rem and confined strictly to the adjudication of whether the Will propounded is the last, valid, and duly executed testament of the Testator.

57. It is a trite law that a Court exercising testamentary jurisdiction does not adjudicate upon questions of title or ownership *inter se* the parties. It is equally unconcerned with collateral disputes pertaining to possession or inheritance, which may arise independently of the Will. Its jurisdiction is limited to determining whether the Will propounded is the last and valid testament of the deceased, and whether it has been duly executed and attested in accordance with the provisions of the Indian Succession Act, 1925 and the Indian Evidence Act, 1872. This position is firmly settled in judicial precedents.

58. In ***Kanwarjit Singh Dhillon v. Hardayal Singh Dhillon***, (2007) 11 SCC 357, the Supreme Court unequivocally held that a Probate Court is not competent to adjudicate disputes relating to title. This was further affirmed in ***Krishna Kumar Birla v. Rajendra Singh Lodha***, (2008) 4 SCC 300, where the Apex Court reiterated that the Probate Court's jurisdiction is confined to the genuineness of the Will and whether the Will was executed in a sound and disposing state of mind, free from coercion or undue influence. It was



clarified that the correctness of the contents of the Will or legal rights flowing therefrom are not to be examined in a Probate Proceedings.

59. In the present case, the Respondent No.2 has, both before the learned Trial Court and in the present Appeal, contended that the Appellant had, at different stages, relied upon documents such as an Agreement to Sell, a General Power of Attorney, an Affidavit, and a registered 2002 Will, and thereafter, placed reliance on a set of Relinquishment Deeds executed by other legal heirs in his favour. Even if these assertions are assumed to be correct, they are immaterial in the context of the issue before the Testamentary Court, which is not concerned with the establishment of proprietary rights or title. The relevance of such documents, if any, falls within the domain of a competent Civil Court in appropriate proceedings.

60. The primary issue before the Trial Court was whether the 2008 Will propounded by Respondent No.2, was executed by the Testator in a sound disposing mind, of his own volition, and attested in accordance with law.

61. The Impugned Order has considered the documentary and oral evidence led in the Probate Petition. The learned Trial Court has relied upon the testimony of Sh. Gurdeep Singh Dua, Advocate who was one of the attesting witnesses to the 2008 Will. The learned Trial Court has found that the 2008 Will was proved in view of Section 68 of the Indian Evidence Act, 1872 as one of the two attesting witnesses of the Will was examined, which was held to be sufficient in accordance with law.

62. The learned Trial Court has examined the contradictory stand taken by the Appellant in Civil Suit No.38/2015 wherein the Appellant claimed that the property was purchased from his father based on the Agreement to Sell GPA, Will etc. in the year 2002 whereby the Appellant and his mother became the owner of the property. After the death of Appellant's mother, the



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Respondent Nos.4 to 6, who are the sisters of the Appellant, executed the relinquishment deeds dated 10.10.2014, 01.11.2014, 09.01.2015 and 22.12.2015. Accordingly, the Appellant had taken a contrary stand in the Civil Suit No. 38/2015, which was dismissed as the Appellant was not able to prove ownership of the property.

63. In view of the above, although the 2002 Will may have been executed by the Testator, the same was not the last Will of the Testator as 2008 Will was subsequent in time. Even 2002 Will was accompanied by Agreement to Sell, GPA in favour of the Appellant and his mother and the same did not transfer the property in the name of the Appellant and his mother in view of the decision of the Supreme Court in *Suraj Lamp v. State of Haryana*, 183 (2001) DLT 1 (SC), whereby the Supreme Court held that agreement to sell, GPA, Will shall not constitute valid transfer of the property. It appears that the 2002 Will was executed by the Testator for the purpose of sale of the property, which was not materialized. Hence, the Appellant cannot rely upon 2002 Will to claim ownership of the property.

64. The Appellant has not challenged the judgement dated 30.05.2019 whereby the Civil Suit No.38/2015 filed by the Appellant was dismissed, which shows that the Appellant has not pursued his case about ownership of the property on the basis of 2002 Will.

65. Even the Relinquishment Deeds do not mention about the 2002 Will and proceed on the basis as if there was no Will of the Testator as the said Deeds mention that the Appellant became the owner of 2/7th share in the property after the demise of the Testator. The reliance on the said Relinquishment Deeds by the Appellant shows that Appellant never considered the 2002 Will as the last and final Will of the Testator.



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66. The Trial Court has rightly rejected the evidence of handwriting expert as the comparison of the signature of the Testator was carried out on the 2008 Will and photocopy of 2002 Will, rather than its original. Since, the Appellant failed to produce the original of 2002 Will, the evidence of the handwriting expert cannot be relied upon.

67. The Appellant has raised an objection that 2008 Will was not produced by Respondent No.2 along with the written statement filed in Civil Suit No.38/2015. However, the judgment dated 30.05.2019 dismissing Civil Suit No. 38/2015 has framed an issue with regard to the 2008 Will executed by the Testator. Hence, the objection of the Appellant about not filing a copy of 2008 Will along with the written statement to Civil Suit No. 38/2015 cannot be accepted.

68. As regards 2008 Will being surfaced after eight years of the demise of the Testator, the learned Trial Court has correctly observed that the 2008 Will was produced when the Appellant filed Civil Suit No.38/2015. As the Appellant and Respondent No.2 were in the possession of the property in the same proportion as per the allocation in the 2008 Will, there was no occasion to rely upon the 2008 Will until the Appellant filed the Civil Suit No.38/2015 claiming ownership of the entire property. Therefore, there was no inconsistent position adopted by Respondent No. 2 and there were no suspicious circumstances surrounding 2008 Will as alleged by the Appellant.

69. Further, there is no requirement to have attesting witnesses to a Will known to the family members of the Testator under law. Hence, such an objection by the Appellant is untenable. As regards, the Testator being literate in Urdu language alone, the learned Trial Court has relied upon the testimony of the attesting witness Sh. Gurdeep Singh Dua, Advocate, who confirmed that the contents of the 2008 Will were explained to the Testator



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prior to the execution. In view of the said evidence, the objection of the Appellant was rightly rejected by the learned Trial Court in the Impugned Order.

70. As regards, the 2008 Will incorrectly recording the age of the Testator as 66 years, while the Testator was of 74 years at the time of execution of 2008 Will is not fatal so long as the execution of 2008 Will was proved in accordance with law.

71. Regarding the 2008 Will not making reference to the earlier registered 2002 Will, it is not necessary under law to make reference to the prior Will at the time of making the last Will. As 2008 Will was subsequent in time to 2002 Will, the subsequent Will would prevail irrespective of the mention about the previous Will.

72. The learned Trial Court has considered all the objections of the Appellant while passing the Impugned Order and found that the 2008 Will was validly executed.

73. For the above reasons, this Court finds that the 2008 Will has been proved in accordance with the law and the requirements of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 have been satisfactorily fulfilled.

74. There is no infirmity with the Impugned Order and, accordingly, the present Appeal is dismissed. All the pending Application(s), if any, stand disposed of. There shall be no order as to costs.

TEJAS KARIA, J

JUNE 25, 2025/ 'A'

[Click here to check corrigendum, if any](#)