$~J-1 (Original)

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

% *Judgment Reserved on: 19.05.2026*
*Judgment Delivered on: 07.07.2026*

\+ CS(OS) 143/2021

GOURI SARKAR ANR .....Plaintiffs

Through: Mr. Jai Sahai Endlaw and Mr. Zubin M. John, Advs.

versus

SANJAY ROY & ORS. .....Defendants

Through: Mr. S.K. Bhaduri, Mr. S.S. Sharma, Ms. Neetu Gupta and Ms. Harshita Jain, Advs. for D-1, 4, & 5.

**CORAM:**
**HON'BLE MR. JUSTICE VIKAS MAHAJAN**

**JUDGMENT**

**VIKAS MAHAJAN, J**

***I.A. 34708/2024 (under Order XII Rule 6 r/w Section 151 CPC by plaintiffs)***

1. The present application has been filed by the plaintiffs under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter 'CPC'), seeking a preliminary, as well as the final decree of partition in respect of the immovable property *admeasuring* 160 sq. yards, bearing No. D-603, Chittaranjan Park, New Delhi–110019 (hereinafter referred to as the **'suit property'**), which is a built up three-storey residential house.

**BRIEF FACTS**

2. The facts in brief as borne out from the record are that late Sh. S. C. Roy was the absolute owner of the suit property. He passed away on

30.01.1991, and was survived by the following Class-I legal heirs, which included a wife and four children:

i. Smt. Kalyani Roy (Wife) – Died on 19.01.2017
ii. Smt. Gouri Sarkar (Daughter) - Plaintiff No. 1
iii. Sh. Amitabh Roy (Son) - Plaintiff No. 2
iv. Sh. Sanjay Roy (Son) - Defendant No. 1
v. Sh. Partha Sarathi Roy (Son) - Missing since 07.10.1999

3. It is the case of the plaintiffs that late Sh. S.C. Roy executed a registered Will dated 15.03.1988, whereby he bequeathed the suit property to his wife, late Smt. Kalyani Roy, and thereafter to his aforementioned children.

4. On the basis of the aforesaid Will and confirmatory affidavits filed by the parties, the suit property was mutated in the name of Smt. Kalyani Roy in the records of the Land & Development Office ('L&DO') *vide* Mutation Letter No. L&DO/PSII/280 dated 06.04.1995, and was subsequently converted from leasehold to freehold *vide* Conveyance Deed dated 07.12.2001 executed by the 'L&DO' in her favour.

5. Basis said Conveyance Deed, Smt. Kalyani Roy executed a Collaboration Agreement dated 09.08.2016 with Sh. Sandeep Soni, whereunder he was entrusted with demolishing the existing structure and constructing a new multi-storeyed building.

6. Smt. Kalyani Roy passed away on 19.01.2017, leaving behind a Will dated 30.03.2016, whereby she bequeathed the suit property equally amongst her four children, with a stipulation that should Sh. Partha Sarathi Roy fail to return within one year from the date of her death, his 1/4$^{th}$ share would devolve upon her four grandchildren, namely Aditi Sarkar (defendant

no. 2), Aditya Roy (defendant no. 3), Shibani Roy (defendant no. 4), and Juimala Roy (defendant no. 5).

7. Following Smt. Kalyani Roy's demise, certain disputes arose in respect of the said Collaboration Agreement, whereupon Sh. Sandeep Soni invoked the arbitration clause against defendant no. 1, that culminated into an arbitral award dated 02.03.2020, whereby it was held that Smt. Kalyani Roy had only a life interest in the suit property and, therefore, lacked the competence to enter into the Collaboration Agreement.

8. The said award was challenged by Sh. Sandeep Soni under Section 34 of the Arbitration and Conciliation Act, 1996 [hereinafter, 'A&C Act'] bearing O.M.P.(COMM) 36/2021, titled as *Sandeep Soni v. Sanjay Roy & Ors.*

9. During the pendency of the aforesaid challenge, the Plaintiffs filed the present suit for partition relying upon the Will dated 15.03.1988 of late Sh. S.C. Roy.

10. Thereafter, this Court *vide* judgment dated 01.02.022 in O.M.P.(COMM) 36/2021, set aside the aforesaid arbitral award dated 02.03.2020 and held that Smt. Kalyani Roy had inherited absolute interest in the suit property under the Will dated 15.03.1988.

11. Defendant No. 1 preferred an appeal against the aforesaid judgment dated 01.02.2022, being FAO(OS)(COMM) No. 92/2022, titled as *Sanjay Roy v. Sandeep Soni & Ors.*, which was dismissed by the Division Bench of this Court *vide* judgment dated 20.05.2022. Still feeling aggrieved, the defendant no.1 assailed the judgment of the Division Bench by filing the Special Leave Petition (Civil) No. 017871/2022 before the Hon'ble Supreme Court, which likewise, came to be dismissed *vide* order dated 10.10.2022.

12. Pursuant to the judgment dated 01.02.2022 in O.M.P.(COMM) 36/2021, this Court, *vide* order dated 09.02.2022, queried defendant no. 1 regarding his stance on the Will dated 30.03.2016 left behind by Smt. Kalyani Roy, to which learned counsel for defendant no. 1 stated that his client accepted the said Will.

13. Against the backdrop of aforesaid factual matrix, the plaintiffs filed an application under Order VII Rule 14 CPC, bearing I.A. No. 5248/2022, for bringing on record the Will dated 30.03.2016, which was allowed *vide* order dated 28.04.2022.

14. Simultaneously, the plaintiffs also filed an application under Order VI Rule 17 CPC, bearing I.A. No. 4828/2022, seeking amendment of the plaint to make the Will dated 30.03.2016 the basis of the suit, as well as an application under Order I Rule 10 CPC, bearing I.A. No. 4367/2022, seeking impleadment of defendant nos. 2 to 5, being the grandchildren of Smt. Kalyani Roy and beneficiaries under the said Will.

15. The aforesaid applications for amendment of the plaint and for impleadment of defendant nos. 2 to 5 were both allowed *vide* order dated 05.05.2022, pursuant to which summons were issued to the newly impleaded defendants. Thereafter, *vide* order dated 05.08.2022, this Court recorded that defendant nos. 2 and 3 do not wish to contest the suit as they were supporting the case of the plaintiffs.

16. Defendant No. 1, along with his two daughters i.e. defendant nos. 4 and 5 filed written statements to the amended plaint. In their respective written statements, they have contested the Will dated 30.03.2016 of late Smt. Kalyani Roy, alleging that the Will is manufactured in collusion with the builder under suspicious circumstances, taking advantage of the

testatrix's frail health, lack of English proficiency, and that she was residing under the coercion of plaintiff no.1. The defendants further contend that the Will is unenforceable for want of probate and stands superseded by a subsequent Family Settlement dated 21.10.2016, under which plaintiff no.1 relinquished all claims to the suit property. They have also raised preliminary objection that death of Sh. Partha Sarathi Roy has not yet been legally declared.

17. Significantly, in his amended written statement defendant no.1 contested the Will dated 30.03.2016, notwithstanding his prior acceptance of the said Will, which admission had unequivocally been recorded by this Court *vide* order dated 09.02.2022.

18. The plaintiffs have filed the present application under Order XII Rule 6 read with Section 151 CPC, seeking a preliminary and final decree of partition based on alleged admission of the Will dated 30.03.2016.

## SUBMISSIONS OF THE PARTIES

### Plaintiffs' submissions

19. Mr. Jai Sahai Endlaw, learned counsel for the plaintiffs, submits that the present suit was initially founded on the Will dated 15.03.1988 of late Sh. S.C. Roy, whereunder Smt. Kalyani Roy was understood to hold a life interest, with the suit property thereafter devolving in equal shares upon the four children of late Sh. S.C. Roy.

20. Elaborating further, he submits that the arbitral award dated 02.03.2020, holding that Smt. Kalyani Roy possessed only a life interest in the suit property, was set aside by this Court *vide* judgment dated

01.02.2022 in O.M.P.(COMM) 36/2021, which held that she had inherited an absolute interest under the Will of late Sh. S.C. Roy.

21. He further submits that the dismissal of defendant no.1's Special Leave Petition *vide* order dated 10.10.2022 conclusively settled the question of Smt. Kalyani Roy's absolute ownership, thereby validating her testamentary capacity to execute the Will dated 30.03.2016 in favour of her four children, therefore, plaint was amended to claim partition on the basis of Will dated 30.03.2016.

22. Adverting to the proceedings before this Court, Mr. Endlaw submits that on 09.02.2022, when directly queried regarding defendant no. 1's stance *qua* the Will dated 30.03.2016 in light of the judgment in O.M.P.(COMM) 36/2021, learned counsel for defendant no.1 made an unequivocal statement accepting the said Will, which statement stands recorded in the order of that date. Subsequent thereto, defendant no.1 made an attempt to resile from the said admission, by way of an I.A. No. 4558/2022, seeking modification of the order dated 09.02.2022, which was rejected by this Court *vide* order dated 24.03.2022, specifically holding that the statement made by the counsel was a categorical and voluntary stand, and not an inadvertent submission liable to be corrected.

23. Drawing strength from the above, he submits that despite the admission having attained finality, defendant no. 1, in concert with defendant nos. 4 and 5, denied the Will dated 30.03.2016 in the written statement to the amended plaint, which denial is a mere afterthought intended to resile from a solemn admission made before the Court and to prolong the litigation.

24. In the same vein, it is submitted that defendant nos. 4 and 5 merely reproduced the written statement of defendant no. 1 verbatim, without independent application of mind, even though their own locus to contest the suit is traceable solely to the Will dated 30.03.2016; if their stand denying the Will is accepted, they would have no right, title or interest in the suit property and, consequently, no locus to resist the present application.

25. Premised on the cumulative effect of the above, Mr. Endlaw submits that the admissions made by defendant no. 1, in the form of the judicial statement recorded on 09.02.2022 leave no triable issue surviving in the suit, and that the plaintiffs are entitled forthwith to a preliminary decree of partition without the matter being relegated to trial.

26. Concluding his submissions, Mr. Endlaw submits that the earlier application under Order XII Rule 6 CPC bearing I.A. No. 7992/2021, filed prior to amendment of the plaint, was rendered infructuous upon the plaint being amended to rely on the Will dated 30.03.2016, and that the present application has accordingly been filed *bona fide* and in the interest of expeditious adjudication of the suit.

**Submissions on behalf of defendant nos. 1, 4 and 5**

27. *Per contra*, Mr. S.K. Bhaduri, learned counsel for defendant nos. 1, 4 and 5 / non-applicants, submits that the present application under Order XII Rule 6 CPC is wholly misconceived and an abuse of the process of the Court, inasmuch as the plaintiffs, having already filed and withdrawn an earlier application bearing I.A. No. 7992/2021 under the same provision, are now pressing a fresh application under the identical provision with the sole object of pressurising the answering defendants.

28. Refuting the plaintiffs' stand, he submits that the defendants/non-applicants have made no unequivocal or categorical admission that could justify the grant of a decree without trial, under Order XII Rule 6 CPC.

29. He further submits that a Family Settlement dated 21.10.2016 had been arrived at in the presence of all family members including defendant nos. 4 and 5, whereunder plaintiff no.1 is alleged to have relinquished all claims to the suit property. Elaborating on the terms of the Family Settlement, he submits that plaintiff no. 1, having received and retained the entire sale consideration from Industrial Plot No. C-165, Phase-II, Noida Extension, a plot allotted in the name of late Sh. S.C. Roy, expressly agreed under the said Settlement not to claim any share in the suit property, and is accordingly estopped from advancing any claim thereto.

30. Pressing his submissions further, he contends that the execution of either Will, whether by the father or by the mother, is wholly immaterial at this stage, as no Will has been proved on record and no probate proceedings have been instituted till date.

31. Adverting to the order dated 09.02.2022, Mr. Bhaduri submits that the statement recorded therein does not constitute a binding admission, having been made prior to the impleadment of defendant nos. 2 to 5 and the filing of the written statement to the amended plaint; the plaintiffs cannot be permitted to rely upon such an isolated statement to bypass the trial process.

32. Traversing the factual submissions of the plaintiffs, Mr. Bhaduri categorically denies that the Will dated 30.03.2016 stands admitted by the defendants/non-applicants in any manner, whatsoever.

33. In conclusion, he submits that the present application is motivated solely by an intent to harass the defendants/non-applicants and circumvent the trial process.

**ANALYSIS**

34. I have heard the learned counsels for the parties, and have carefully perused the relevant documents on record.

35. A short question which arises for consideration of this Court in the present application is that whether a decree under Order XII Rule 6 CPC can be passed in favour of the plaintiffs solely on the basis of the statement of the counsel for defendant no.1, whereby he accepted the Will dated 30.03.2016 executed by Smt. Kalyani Roy, the deceased mother of the plaintiffs as well as defendant no.1.

36. As borne out from the facts, the suit property was owned by Late Sh. S.C. Roy, who passed away on 30.01.1991 leaving behind a registered Will dated 15.03.1988, whereby he bequeathed the suit property to his wife Late Smt. Kalyani Roy and thereafter to his aforementioned children.

37. On the basis of Will dated 15.03.1988 executed by Late Sh. S. C. Roy the suit property was mutated in the name of Smt. Kalyani Roy in the records of L&DO, and was subsequently converted from leasehold to freehold vide Conveyance Deed dated 07.12.2001 executed in favour of Smt. Kalyani Roy by the L&DO.

38. Later on, Smt. Kalyani Roy executed a Collaboration Agreement dated 09.08.2016 with Sh. Sandeep Soni. However, Smt. Kalyani Roy passed away on 19.01.2017 leaving behind a Will dated 30.03.2016.

39. Following her demise, certain disputes arose in respect of the said Collaboration Agreement, whereupon Sh. Sandeep Soni invoked the arbitration clause. The arbitration proceedings in which the plaintiffs as well as defendant no.1 were also parties, culminated in an arbitral award dated 02.03.2020, whereby it was held that Smt. Kalyani Roy had a life interest in the suit property and therefore lacked the competence to enter into the said Collaboration Agreement.

40. On the said award being challenged by Sh. Sandeep Soni, the arbitral award was set aside under Section 34 of the A&C Act and it was held that Smt. Kalyani Roy had inherited absolute interest in the suit property under the Will dated 15.03.1988 executed by her husband Late Sh. S.C. Roy. The challenge was further carried by way of an appeal to the Division Bench of this Court and thereafter by way of SLP to the Hon'ble Supreme Court. The appeal as well as the SLP were dismissed and the finding to the effect that Smt. Kalyani Roy had inherited absolute interest in the suit property, attained finality.

41. From the narration of above facts, it appears that insofar as the Will dated 15.03.1988 of Late Sh. S.C. Roy is concerned, there is no dispute as regard its execution as well as its genuineness, rather the said Will was acted upon by the plaintiffs as well as defendant no.1 by submitting their confirmatory affidavits, basis which the suit property was mutated in the name of Smt. Kalyani Roy by the L&DO.

42. The present suit was filed by the plaintiffs in the year 2021, when the aforesaid arbitral award had been challenged by Sh. Sandeep Soni under Section 34 of the A&C Act.

43. At that stage, the partition was sought by the plaintiffs relying upon the Will dated 15.03.1988 of Late Sh. S.C. Roy. It is only after it was finally held that Late Smt. Kalyani Roy had absolute ownership in the suit property by virtue of her husband's Will dated 15.03.1988, thereby validating her testamentary capacity to execute the Will dated 30.03.2016 in favour of her four children, that the plaintiffs sought amendment of the plaint to claim partition on the basis of her Will dated 30.03.2016.

44. The present application has now been filed by the plaintiffs under Order XII Rule 6 CPC seeking preliminary and final decree of partition based on the alleged admission of the defendant's counsel with regard to the execution of Will dated 30.03.2016, as recorded in order dated 09.02.2022. The relevant order is reproduced below in extenso:

> *"1. Mr. S.K Bhaduri, counsel for the Defendant, has been put a direct query with respect to the stand of his client – in view of the judgment passed in O.M.P. (COMM) 36/2021.*
>
> *2. Mr. Bhaduri's response is evasive.* ***However, he states that his client does accept Smt. Kalyani Roy's will dated 30th March, 2016.***
>
> *3. In view of the above, list for further consideration on 04th March, 2022."*
>
> (emphasis supplied)

45. Though, subsequently, defendant no.1 filed an application being IA. 4558/2022 seeking modification of the Order dated 09.02.2022, but the same was rejected by this Court *vide* order dated 24.03.2022, observing as under:

> *"4.* ***The Application is premised on the ground that the statement made by Mr. S.K. Bhaduri, counsel for the Defendant, as recorded on 9th February, 2022, was made inadvertently. This ground pitched by the applicant to seek modification/***

***correction of the said order is only a clever submission to wriggle out of the admission and cannot be permitted****. On the afore-said date, the Court had queried from Mr. Bhaduri of his stand, in light of the judgment delivered in O.M.P. (COMM) 36/2021, which decided an issue qua the will of Shri S.C. Roy.* ***Mr. Bhaduri, however, did not take categorical stand and instead volunteered that his client accepts the Will of Smt. Kalyani Roy dated 30th March, 2016.***

*5. Smt. Kalyani Roy testamentary capacity to write the Will directly flows from the Will of S.C Roy.* ***This categorical stand taken by the counsel on behalf of his client and cannot be considered to be an inadvertent statement made before the Court.***

***6. Accordingly, the Court finds no ground to make any modification of the Order dated 9th February, 2022.***

*7. Dismissed."*

(emphasis supplied)

46. Based on the aforesaid admissions, present application has been filed by the plaintiffs.

47. For answering the question as formulated above, it is imperative to advert to the legal position with regard to the manner and mode of proof of the Will.

48. In ***Savithri v. Karthyayani Amma, (2007) 11 SCC 621***, the Hon'ble Supreme Court held that onus of proving the Will is on the propounder. A will like any other document is to be proved in terms of the provisions of the Succession Act and Evidence Act. The testamentary capacity of the testator must also be established. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will and it needs to be shown that the Will has been signed by the testator with his free will

and that at the relevant time, he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that the testator signed the Will in the presence of two witnesses, who attested his signature in his presence or in the presence of each other. In the event suspicious circumstances exists, the propounder will have to explain them to the satisfaction of the Court before it can be accepted as genuine.

49. Similar observations were made by the Hon'ble Supreme Court in ***Ramesh Verma v. Lajesh Saxena, (2017) 1 SCC 257.*** The Court also observed that the mandate of Section 68 of the Evidence Act for proving the Will has to be complied with, even in a case where the opposite party does not specifically deny the execution of the documents in the written statement. The relevant part of the said decision reads thus:

> "*13. A will like any other document is to be proved in terms of the provisions of Section 68 of the Evidence Act and the Succession Act, 1925. The propounder of the will is called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution.* ***This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement.***"
>
> (emphasis supplied)

50. In ***S.R. Srinivasa and Others V. S. Padmavathamma, (2010) 5 SCC 274,*** the Hon'ble Supreme Court was dealing with the question as to whether admission about making of Will would amount to admission of due

execution and genuineness of Will. In the said case, the First Appellate Court had returned the finding that the admission was with regard to the testator having written the Will, but there was no admission as regards the genuineness of the Will. However, the High Court in the Regular Second Appeal had set aside the judgment of the First Appellate Court. The Hon'ble Supreme Court reversed the judgment of the High Court observing that there was no admission about the genuineness or legality of the Will, and the admission was only about the making of the Will by the testator. The relevant extract from the said decision reads thus:

> *"**43.** The aforesaid findings are borne out from the record produced before us, which we have perused. There is **no admission about the genuineness or legality of the will either in the plaint of OS No. 233 of 1998 or in the evidence of PW 1. The High Court committed a serious error in setting aside the well-considered findings, which the first appellate court had recorded upon correct analysis of the pleadings and the evidence.***
>
> *xxx xxx xxx*
>
> ***48. Examined on the basis of the law stated above we are unable to agree with the High Court that there was no need for independent proof of the will, in view of the admissions made in OS No. 233 of 1998 and the evidence of PW 1. In fact there is no admission except that Puttathayamma had executed a will bequeathing only the immovable properties belonging to her in favour of Indiramma. The first appellate court, in our opinion, correctly observed that the aforesaid admission is only about the making of the will and not the genuineness of the will.** Similarly, PW 1 only stated that he had come to know about the registration of the will of his grandmother favouring Indiramma through the written statement of the first defendant. The aforesaid statement is followed by the following statements "Other than that I did not know about the will. She was not signing in English. I have not seen her signing in Kannada. There was no reason for my*

*grandmother to write a will favouring Indiramma." Even in the cross-examination he reiterated that "I know about the will written by Puttathayamma on 18-6-1974 bequeathing the properties to Indiramma only through the written statement of the first defendant".*

***49.** In view of the above we are of the opinion that the High Court committed an error in setting aside the well-considered finding of the first appellate court.* ***The statements contained in the plaint as well as in the evidence of PW 1 would not amount to admissions with regard to the due execution and genuineness of the will dated 18-6-1974.***

***50.** In our opinion, the High Court also committed a serious error by totally disregarding the suspicious circumstances surrounding the execution of the will.* ***The first appellate court on analysis of the entire evidence had clearly recorded cogent reasons to conclude that the execution of the will is surrounded by suspicious circumstances."***

(emphasis supplied)

51. In ***Ramesh Chand (D) Thr. Lrs. v. Suresh Chand and Another, 2025 SCC OnLine SC 1879,*** the Hon'ble Supreme Court negated the finding of the High Court to the effect that the requirement of examining the attesting witnesses springs into action only in cases of disputes between the legal heirs. It was held that such an observation is contrary to law, for Section 68 of the Evidence Act makes it mandatory to examine at least one of the witnesses of the Will. Further, if the Will is surrounded with suspicious circumstances, the same will have to be removed by the propounder and if not removed, the Will propounded, though registered, would not confer any valid title on the propounder. The relevant extract from the decision reads thus:

*"27. Considering the aforementioned cases, it is clear that in order to rely upon a Will, the same has to be proved in*

*accordance with law. A Will has to be attested by two witnesses, and either of the two attesting witnesses have to be examined by the propounder of the will. In the present matter, we have carefully perused the Trial Court's judgment.* ***There is not an iota of discussion about the validity of the Will as contemplated under Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872 and yet, the validity of the Will has been upheld. This is contrary to law. Even the High Court, while evaluating the validity of the Will, has gone on a different tangent and has erroneously held that the requirement of examining the attesting witnesses springs into action only in cases of disputes between legal heirs. Such an observation is quite contrary to law, for Section 68 of the Evidence Act makes it mandatory to examine at least one of the attesting witnesses of the Will. Mere fact that the Will was registered will not grant validity to the document.*** *Besides that, the will propounded by plaintiff is surrounded with suspicious circumstances, in as much as the alleged propounder of the Will, Lt. Sh. Kundan Lal, had four children, including the plaintiff and the defendant No. 1. There is not even a whisper of reasoning as to why the propounder of the Will choose to exclude other three children from the bequest, and whether any other properties or assets were given to them. It is highly unlikely that a father would grant his entire property to one of his children, at the cost of three others, without there being any evidence of estrangement between the father and the children.* ***This suspicious circumstance surrounding the will has not been removed by the plaintiff either. Hence, for these cumulative reasons, the Will propounded by plaintiff though registered would not confer any valid title on the plaintiff either.***

(emphasis supplied)

52. What emerges from the above clear expositions is that the admission *qua* making of Will is distinct from the admission with regard to the genuineness of the Will. Even if the existence or the making of Will has been accepted, the same cannot be construed as an admission *qua* the genuineness or legality of the Will. In case the circumstances alleging the

Will being surrounded by suspicious circumstances have been pleaded, the onus would be on the propounder to explain the same to the satisfaction of the Court before the Will can be accepted as genuine.

53. The facts of the case will have to be tested on the anvil of the aforesaid legal position. Adverting to the facts of the present case, it needs to be noted that in the statement made by the learned counsel for defendant no.1, which was recorded on 09.02.2022, what has been admitted is the existence and making of a Will by Late Smt. Kalyani Roy. However, there is no clear, unequivocal or unambiguous admission with regard to the genuineness and valid execution of the said Will. Even in his written statement filed in response to the amended plaint, defendant no.1 has admitted the execution of Will by Smt. Kalyani Roy, but has alleged that plaintiffs in collusion with the builder got the alleged Will of mother manufactured and there exists suspicious circumstances in respect of its execution.

54. In the written statement, it has also been averred that the Will is in English, whereas, Smt. Kalyani Roy did not know English. Further, the physical condition of the mother was also bad at that time. She was forced to stay with the plaintiffs during the period alleged Will dated 30.03.2016 and the Collaboration Agreement with Sh. Sandeep Soni, were executed. Even the share of the fourth brother of the plaintiffs and defendant no.1 namely, Partha Sarathi Roy, who was missing since 07.10.1999, cannot be distributed. The stand of defendant no.1 in that behalf, as borne out from Para 9 of the written statement, is reproduced hereinbelow for ready reference:

*"9. In reply to paragraph No.9 of the amended plaint, it is not disputed that Smt. Kalyani Roy, mother of the answering Defendant had passed away on 9.1.2017.* ***Execution of the Will by Smt. Kalyani Roy as alleged by the Plaintiffs herein is a matter of record. However it is submitted that plaintiff in collusion with the builder got the alleged will of the Mother Manufactured and there exist suspicious circumstances in respect of the execution of the alleged will. The mother of the defendant No.1 did not know English whereas the alleged collaboration agreement and the alleged will is in English language which language was not known by the mother. The physical condition of the mother was also very bad at that time. Moreover during these days, the plaintiff no.1 in planned manner had taken the mother with her and mother was forced to stay with the plaintiff for same time during the period of alleged collaboration agreement and the alleged will Dt.30-3-2016. In any event, in the absence of proving the Will, the share as mentioned by the mother in the said Will cannot be given effect to.*** *Moreover, the Plaintiffs had never filed any probate in respect of the Will Dt.30.3.2016 executed by late Smt. Kalyani Roy.* ***Even otherwise, without proving the said Will, share of Partho Sarathi Roy cannot be distributed.*** *Moreover, no suit for declaration has ever been filed regarding the death of Partho Sarathi Roy inasmuch as only after the filing of the said suit, by making the State a party, declaration can be sought and the answering Defendant also does not know whether Parthi Sarathi Roy had expired or had left behind any other legal heir by this time. For that reason, straightway, the Plaintiffs cannot be permitted to claim that the share of Partho Sarathi Roy can be distributed amongst Defendant Nos.3 to 6, as mentioned in the present amended suit…."*

(emphasis supplied)

55. It can be seen from the above that what has been accepted by the defendant no.1 in the statement recorded by the Court in the order dated 09.02.2022, as well as in the written statement, is the execution and existence of the Will dated 30.03.2016, by Late Smt. Kalyani Roy. Clearly,

the defendant no.1 in his written statement has raised the suspicious circumstances and doubt about the genuineness of the Will. There is no admission *qua* the genuineness of the Will. In the absence of clear, unequivocal and unambiguous admission with regard to the genuineness of the Will, the plaintiffs cannot be absolved from proving the valid execution of the Will as well as from discharging the onus to explain the suspicious circumstances to the satisfaction of the Court before the Will dated 30.03.2016 of Late Smt. Kalyani Roy is accepted as genuine.

56. The upshot of above discussion is that there is no merit in the present application, and the same is accordingly dismissed.

57. Insofar as other submissions of the plaintiffs/applicants are concerned, the same for the time being pale into insignificance, and are left open for being decided later, at an appropriate stage.

**VIKAS MAHAJAN, J.**

**JULY 07, 2026**/*jg*