

## Baldev Raj Ahuja Vs State, N.C.T Of Delhi & Ors

**Court:** Delhi High Court

**Date of Decision:** Jan. 23, 2023

**Acts Referred:** Indian Succession Act, 1925 " Section 299  
 Evidence Act, 1872 " Section 68

**Hon'ble Judges:** Manoj Kumar Ohri, J

**Bench:** Single Bench

**Advocate:** Ajit Nair, Gaurav Modwil, S.K. Sharma, Prayas Aneja

**Final Decision:** Dismissed

### Judgement

Manoj Kumar Ohri, J

1. By way of present appeal filed under Section 299 of the Indian Succession Act, 1925 (hereinafter, referred to as "the Act"), the

appellant/respondent No. 8 seeks setting aside of the order dated 03.11.2016 passed by the learned ADJ-02 (West), Tis Hazari Courts, Delhi in

Probate Case No. 133/10/06 (New P.C. No. 16002/2016), whereby Letter of Administration in respect of property bearing No. 2/101, Geeta Colony,

Delhi - 110031 was granted in favour of respondent No. 2.

2. Before proceeding further, it is relevant to note that respondent No. 2 is the only contesting respondent in the present appeal as the other

respondents i.e., respondent Nos. 3-9 have filed their "No-Objection" affidavits in favor of the present appellant. For the sake of felicity,

respondent No. 2 is hereinafter referred to as "the respondent".

3. In probate petition, the respondent claimed that her father Ram Chand was the original lessee of property bearing No. 2/101, Block No. 2, Quarter

No. 10, measuring 100 sq. yds. alongwith structure thereon situated at Jheel Khuranja, Geeta Colony, Delhi - 110031 (hereinafter, referred to as the

"subject property"). Ram Chand had executed a Will dated 07.02.1971 in favor of Talian Bai @ Talia Bai who, after the death of Ram Chand,

became the absolute owner of the subject property as both her daughters, namely, Shello Bai and the respondent had executed a joint relinquishment

deed in her favor. Talian Bai passed away on 27.06.2004, leaving behind her two daughters i.e., the respondent and Shello Bai as the only legal heirs.

During her life time, Talian Bai had executed a registered Will dated 31.12.1990 (hereinafter, referred to as 'the Will') bequeathing the subject

property in favor of the respondent to the exclusion of all others.

4. In probate proceedings, to prove the Will, the respondent examined herself (as PW-1) and the scribe/attesting witness of the Will, namely, Ramesh

Vashisth (as PW-6). Additionally, the concerned persons from the office(s) of L&DO, Sub-Registrar, Seelampur and the Election Commission were

examined to prove mutation in favor of Talian Bai; the relinquishment deed; and the residential record of the appellant respectively. The

appellant's objections came to be dismissed vide the impugned order.

5. Appellant's contentions stem from the assertion that he is the adopted son of the testatrix and Ram Chander @ Ram Chand. He contended that

the Trial Court ignored the following suspicious circumstances surrounding the Will:

(i) the sole beneficiary had participated in the execution of the Will,

(ii) the Will not only failed to mention anything about the appellant (the adopted son of the testatrix), but also did not provide any explanation for his

exclusion,

(iii) the Will was written in English and neither the testatrix (being old and illiterate) nor the accompanying persons viz. Rao Ram (the attesting

witness) and Wanti Bai (the sole beneficiary/respondent) were well-versed with the language,

(iv) instead of the right-thumb, left-thumb impression of the testatrix was put on the Will,

(v) neither at the time of execution nor at the time of registration of the Will, any identification document was sought,

(vi) the photograph of the testatrix on the Will was not pasted but stapled,

(vii) the Will was executed on 31.12.1990 and registered on 02.01.1991, however, evidence has come on record to the effect that the propounder, the

testatrix and the attesting witness had gone for the execution and registration of the Will only once, and

(viii) the Will surfaced after two years of its execution when the appellant preferred a suit seeking relief of declaration, partition, possession, injunction

etc., being Suit No. 374/06/2012 (New No. 8746/2016), which is statedly pending consideration before the learned SCJ-cum-RC (East District),

Karkardooma Courts, Delhi.

6. Appellant further contended that the respondent failed to prove the execution of the Will, as the testimonies of the respondent and the attesting

witness relating to the sequence in which signatures were put on the Will had material contradictions. It was submitted that while as per the

respondent, the Will was first signed by the attesting witness- Ramesh Vashishth, then by the testatrix, followed by Rao Ram (the second attesting

witness), Ramesh Vashishth (the first attesting witness) had given a different sequence. It was next contended that it has not come on record that at

the time of execution, the testatrix was in a sound state of mind or that anybody explained her the contents of the Will. Lastly, a challenge was also

made to Ram Chander's Will by submitting that he had no authority to bequeath the subject property to the testatrix, as it was allotted to him as an

evacuee property. The submissions were sought to be supplemented by referring to the following decisions:

(i) Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao and Others reported as (2006) 13 SCC 433,

(ii) Kavita Kanwar v. State (N.C.T. Delhi) & Ors. reported as 2014 SCC OnLine Del 3399,

(iii) Shashi Kumar Banerjee and Others v. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others reported as

AIR 1964 SC 529,

(iv) Surendra Pal and Others v. Dr (MRS) Saraswati Arora and Another reported as (1974) 2 SCC 600,

(v) Bhagwan Kaur W/o Bachan Singh v. Kartar Kaur W/o Bachan Singh and Others reported as (1994) 5 SCC 135,

(vi) H. Venkatachala Iyengar v. B.N. Thimmajamma and Others reported as 1959 Supp (1) SCR 426,

(vii) Smt. Punni v. Sumer Chand and Others reported as 1994 SCC OnLine HP 18,

(viii) Dharmadas Mondal and Ors. v. Kashi Nath De reported as AIR 1959 Cal 243,

(ix) Ram Nath and Another v. Banto Devi and Others reported as 2014 SCC OnLine P&H 11500,

(x) Smt. Harbans Kaur v. Anoop Singh and Another reported as 1991 (1) SimLJ 217,

(xi) Bishan Singh v. Saran Singh and Ors. reported as MANU/PH/0818/2005, and

(xii) Prithi Singh v. Saran Singh reported as 2005 SCC OnLine P&H 922

7. Per contra, learned counsel for respondent contended that though the appellant filed objections to the probate petition, no contention was raised

doubting either the soundness of mind of the testatrix or her presence at the time of execution/registration or even her thumb impression on the Will.

The only objection taken was with respect to non-mentioning of the factum of appellant's adoption and his name in the Will.

Ã, The appellant's claim apropos his adoption by the testatrix was sought to be negated by referring to the documentary evidence placed on

record that showed him as son of M.D. Ahuja (his biological father) instead of Ram Chand.

Ã, The respondent also sought to justify the bequeathal in her favor by submitting that within 2/3 years of her marriage, she alongwith her family came

back to live with the testatrix and had taken care of her mother till her death on 27.06.2004.

8. In support of his contentions, learned counsel for the respondent placed reliance on the following judgments:

(i) Leela Rajagopal and Others v. Kamala Menon Cocharan and Others reported as (2014) 15 SCC 570,

(ii) Rajindra Motwani v. State and Ors. reported as MANU/DE/0328/2014, and

(iii) *Bharpur Singh and Others v. Shamsher Singh* reported as (2009) 3 SCC 687

9. Before proceeding to analyze the facts and rival contentions, let me recapitulate the legal position vis-à-vis the scrutiny that is required to be done

by a Court in examining a Will, as well as the principles to be taken into consideration apropos suspicious circumstances pointed out, if any, and the

explanation offered in this regard in the present case.

10. Pithily put, while scrutinising execution of a Will, a rational approach is required to be adopted by the Court. In *Anil Kak v. Kumari Sharada Raje*

and *Others* reported as (2008) 7 SCC 695, the Supreme Court has opined that the concerned Court must satisfy its conscience before passing any

order granting probate, as existence of suspicious circumstances significantly impacts the case. Relevant excerpt from the decision is extracted

hereunder:

“52. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the

execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/or letters of administration with

a copy of the will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.

53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.

54. It may be true that deprivation of a due share by (sic to) the natural heir by itself may not be held to be a suspicious circumstance but it

is one of the factors which is taken into consideration by the courts before granting probate of a will.

55. Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation.”

11. In *Leela Rajagopal* (Supra), the Supreme Court has opined as under:

“13. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural.

Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny

before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual

features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last

resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of

any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or

registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and

relied upon before us.

12. While traversing the law, the Supreme Court in *Murthy and Others v. C. Saradambal and Others* reported as (2022) 3 SCC 209 recently reiterated

a few suspicious circumstances as being illustrative, but not exhaustive, in the following manner:

“23. Suspicious circumstances like the following may be found to be surrounded in the execution of the will:

(i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

(ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time.

(iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate

provisions for the natural heirs without any reason.

(iv) The dispositions may not appear to be the result of the testator's free will and mind.

(v) The propounder takes a prominent part in the execution of the will.

(vi) The testator used to sign blank papers.

(vii) The will did not see the light of the day for long.

(viii) Incorrect recitals of essential facts.

13. The statutory provision relevant for the present case i.e., Section 68 of the Indian Evidence Act, 1972 reads thus:

“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.]

14. Needless to state, a Will has to be proved like any other document, subject to the special requirements of attestation provided in Section 63 of the

Act. The test to be applied would be the test of satisfaction of a prudent mind. What is required to be seen is whether the propounder of the Will has

produced satisfactory evidence that the Will was signed by the testatrix who, at the relevant time, was in a sound and disposing state of mind;

understood the nature and effect of the disposition and had put her thumb impression of her own free will.

15. As borne out from the facts, the respondent propounded the Will and to prove its due execution examined herself and Ramesh Vashisth, the

attesting witnesses, who was also the scribe of the Will. By this time, the other attesting witness had already expired. Additionally, the officials from

the office(s) of L&DO, Sub-Registrar and the Election Commission etc. were examined.

16. The respondent had examined herself as PW-1. She deposed that her father Ram Chand was the original lessee of the subject property, and who

prior to his death on 21.08.1971 bequeathed the same in favor of his wife i.e., respondent's mother by way of Will dated 07.02.1971. Her mother

became the owner/lessee of the subject property. The respondent and Shello Bai were the only daughters of the testatrix and both had relinquished

their share in favor of the testatrix by a registered joint relinquishment deed whereafter the subject property also stood mutated in the name of

testatrix. She further deposed that the testatrix executed her last and final registered Will on 02.01.1991 and exhibited the same as Ex. PW-1/3. Shello

Bai expired during the lifetime of the testatrix on 31.08.2003.

Ã, In cross-examination, the respondent stated that her mother was illiterate. She denied the suggestion that the appellant's name figured in the

ration card or that her mother was getting medical benefits from the company where the appellant was serving. She denied the suggestions that the

appellant resided in the subject property or that his marriage was performed there. She clarified that the appellant's marriage was performed in

Rajpura. She denied that the water connection existed in appellant's name. On a question put to her if it was correct that since the appellant was a

minor at the time of death of Ram Chand, no relinquishment deed was obtained from him, it was replied that there was no question of appellant giving

any relinquishment deed as his mother Shello Bai had already given the same.

Ã, She stated that she was asked by her mother to accompany her at the time of execution of the Will. Her uncle Rao Ram (brother-in-law of the

testatrix being elder brother of Ram Chand) had also accompanied them. The Will was read over to the testatrix and she was made to understand the

contents of the same. The testatrix had put her thumb impression on the Will. The attesting witnesses also signed in her presence. She stated that

after her marriage, she stayed at Rajpura for 3/4 years whereafter, she shifted to her mother's house. She denied the suggestion that the appellant

was the adopted son of testatrix.

17. Ramesh Vashisth, the attesting witness, was examined as PW-6. He deposed that being an Advocate he used to practice in the Office of Sub-

Registrar at Seelampur. He further stated that the Will was drafted by him on the instructions of the testatrix. In his presence, the testatrix had put her

thumb impression at two places on the Will as well as at her photograph. Half of the thumb impression appears on the photograph and other half on

the document at the first page of the Will. The Will was first attested by Rao Ram and then by him. He identified his signatures at point A and B and

on the Will.

Ã, In cross-examination, he stated that as there is no mention of any identity document, the same was not sought. It was not insisted upon as there was

no practice prevalent at that time to verify identity. He admitted that he was not aware as to whether Left or Right thumb impression is to be taken in

case of a female.

18. The record clerk, namely, Munesh Kumar from the Office of Sub-Registrar, Seelampur appeared as PW-3. He produced the record pertaining to

the Will as well as the relinquishment deed. Sudhir Kumar, LDC from the Office of Election Commissioner was examined as PW-4, who stated that

as per records for the year 2007, the appellant is shown as son of M.D. Ahuja. Shashi Kant Singh, Tax Assistant (PW-5) produced the income tax

records as per which the name of appellant's father was recorded as Motan Dass Ahuja.

19. The appellant examined himself as RW-1. He deposed that in the tender age of 6-8 months, he was adopted by Ram Chand and the testatrix. It

was claimed that the Will dated 07.02.1971 executed by Ram Chand was forged as the same did not disclose the appellant's name or names of

other legal heirs. He produced and exhibited documents like Ration Card, identity card issued by Election Commission of India, etc. as well as his own

children school records, which showed him to be the resident of the subject property. It further came in his evidence that prior to death of the testatrix,

he did not live in the subject property for about 14 years. The appellant admitted that the respondent and her family members were looking after the

testatrix. He stated that he had filed a suit for declaration, partition, possession and injunction.

20. The entire fulcrum of the appellant's challenge to the authenticity and genuineness of the Will is premised on the claim that despite being the

adopted son of the testatrix and late Shri Ram Chand, he is not named as a beneficiary under the Will. Further, no reason has been assigned for his

exclusion from the estate of the testatrix. In this regard, it is noted that though the appellant claims to have been adopted by the testatrix and late Shri

Ram Chand at a very young age, the relevant school records, identity documents and residential/ income tax records identify him as son of M.D.

Ahuja. In none of the documents, he has been identified as son of late Shri Ram Chand. Note is also taken of the fact that even in the joint

relinquishment deed executed in favor of testatrix by Shello Bai, who was the biological mother of the appellant, the aspect of adoption was not

mentioned. Except for the self-serving statement of the appellant, neither any material nor any evidence has come on the record to prove the factum

of adoption. This Court finds force in the submission made on behalf of the respondent that once the appellant's mother had herself executed the

relinquishment deed qua the subject property in favor of the testatrix, there was no need to assign any reason for appellant's exclusion as a

beneficiary in the Will.

21. Learned counsel for the appellant has referred to various circumstances surrounding the execution of the Will which, according to him, cast doubt

on its legality and validity. At the cost of repetition, it is pertinent to note that a singular circumstance in execution and registration of the Will may not

be enough and it is the cumulative effect of all the circumstances that would weigh with the Court in such a determination.

22. The first contention of the appellant relates to participation of the propounder in execution of the Will. In this regard, it is noted that law does not

prohibit a propounder, who is a beneficiary under the Will, to participate in its execution. Further, such a circumstance alone is not sufficient to

entertain any doubt. It must be seen in the light of other evidence that has come on record. In the present case, from a perusal of the evidence on

record, it nowhere appears that though the respondent was present, she in any way forced or influenced the testatrix to execute and sign the Will

against her wishes. On the contrary, the testimony of Ramesh Vashisth establishes that he had prepared the Will on the instructions of the testatrix. In

fact, the respondent had also deposed that she had accompanied the testatrix only on her asking. The opinion of this Court is fortified by the decision in

Pentakota Satyanarayana and Others v. Pentakota Seetharatnam and Others reported as (2005) 8 SCC 67, where it was held by the Supreme Court

that mere active participation of the propounder in the registration of Will by itself would not be a vitiating factor. To similar extent is the ratio of

decisions of Supreme Court in Shashi Kumar Banerjee (Supra), Gurdev Kaur and Others v. Kaki and Others reported as (2007) 1 SCC 546, Malkani

(Smt) v. Jamadar and Others reported as (1987) 1 SCC 610 and a Co-ordinate Bench of this Court in Rajindra Motwani (Supra).

23. The second contention of the appellant relates to the putting of left-thumb impression on the Will. Curiously, the appellant has not doubted that the

thumb impression appearing on the Will is of the testatrix or that the testatrix did not appear before the Sub-Registrar. The only objection is that the

impression ought to have been of the right thumb instead of left. In this regard, suffice it to note that on a suggestion given, Ramesh Vashisth had

replied that "it is correct that Smt. Talian Bai had put her thumb impression and Sh. Rau Ram had signed in Urdu on the Will". In this backdrop,

the decisions in Prithi Singh (Supra), Bishan Singh (Supra) and Harbans Kaur (Supra) are distinguishable on facts.

24. Appellant's contention that the photograph of the testatrix was not pasted but stapled on the Will, is equally misplaced. He never contended



that the photograph was not of the testatrix. Moreover, Ramesh Vashisth in his testimony clearly stated the testatrix had put her thumb impression in a

way that half of it came on the photograph and the other half on the document under it.

25. As to the contention regarding surfacing of the Will after two years of its execution, the respondent has duly justified the same. It has been argued

that probate is optional in Delhi, and it was sought only after the appellant filed a suit for partition and other reliefs.

26. Insofar as the contention that as per testimony of witnesses, they had gone only once for the purpose of execution and registration, but both the

acts were done on different dates, this Court finds no ground to agree with the appellant. The respondent and the attesting witness- Ramesh Vashisth

deposed that the Will was executed on 31.12.1990 and registered on the same day after all the concerned persons appeared before the Sub-Registrar.

Further, in registration of Will, there is presumption as to the validity of the proceedings which had taken place before the Registrar at the time of

registration [Refer: Dharmadas Mondal (Supra)]. It is also worthwhile to note that no question was posed in this regard to the record clerk who could

have explained the procedure as well as the date of registration.

27. It was also contended on behalf of the appellant that signatures of Ramesh Vashisth are appearing twice on the Will. In this regard,

Appellant's reference to the decision in Smt. Punni (Supra) is misplaced as in the present case, Ramesh Vashisth had appended his signatures at

two places which he identified as points A and B on the Will. While one signature was put as scribe of the Will, the other was put as

an attesting witness.

Similarly, the reliance placed on the decisions in H. Venkatachala Iyengar (Supra) and Bhagwan Kaur W/o Bachan Singh (Supra) is misplaced as

in both the captioned cases, the Court found the circumstances surrounding the execution of Will to be suspicious and in the former, the testimony of

the attesting witness was also found to be unconvincing. The position in the instant case is entirely different. Appellant has cited some other decisions

but the same are found to be rendered in the facts of their own case.

28. Pertinently, before the Trial Court and this Court, appellant did not raise any challenge as to the soundness of mind of the testatrix at the time of

execution of the Will. On the other hand, in the opinion of this Court, the propounder discharged her onus that the testatrix had put her thumb

impression on the Will out of her free volition and while being in sound disposition of mind. The Will neither appears to be unnatural or improbable. It

rather stands proved by way of the testimony of the respondent and Ramesh Vashisth, who was the scribe of the Will as well as an attesting witness.

The testimonies of both the witnesses remain unshakeable and convincing. It is trite law that a testamentary Court is not a Court of suspicion but that

of conscience and has to consider relevant material instead of adopting an ethical reasoning [Refer: V. Prabhakara v. Basavaraj K. (dead) by legal

representatives and Another reported as (2022) 1 SCC 115]. Thus, the Will was rightly held to be validly executed and attested in accordance with the

requirements of the Act.

29. In view of the discussion made hereinabove, I find no merit in the present appeal. The impugned order is upheld and the appeal is dismissed

alongwith pending miscellaneous application, if any.