

(2025) 11 DEL CK 0009
Delhi HC
Case No: FAO(OS) No. 91 Of 2018

Surinder Kumar
Grover

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision: Nov. 18, 2025

Acts Referred:

- Indian Succession Act, 1925- Section 63(b)
- Evidence Act, 1872- Section 68

Hon'ble Judges: Anil Kshetarpal, J; Harish Vaidyanathan Shankar, J

Bench: Division Bench

Advocate: Kajal Chandra, Hatneimawi, Suyash Swarup, Ananyay Bhardwaj, Sameer Vashisht, Avni Singh, Harshita Nathrani, Swapan Singhal, Rajiv Bahl, S.P. Srivastava

Final Decision: Allowed

Judgement

Anil Kshetarpal, J

1. With the consent of learned counsel for the parties, the present two connected Appeals arising out of a common judgment dated 25.04.2018 [hereinafter referred to as 'Impugned Judgment'] shall stand disposed of by this common judgment. By way of the Impugned Judgment, the learned Single Judge has disposed of TEST.CAS. 38/2000 and CS(OS) 140/1997, wherein the learned Single Judge has dismissed the Probate case and has allowed the Partition suit against the Appellant herein.

2. At the outset, it is deemed appropriate to clarify the procedural history, albeit briefly, of the two cases that is the subject matter of the Impugned Judgment, which is as follows:

i. TEST.CAS. 38/2000

The aforementioned Probate case was filed by Sh. Surinder Kumar Grover (Appellant herein), seeking the Letters of Administration with respect to the alleged

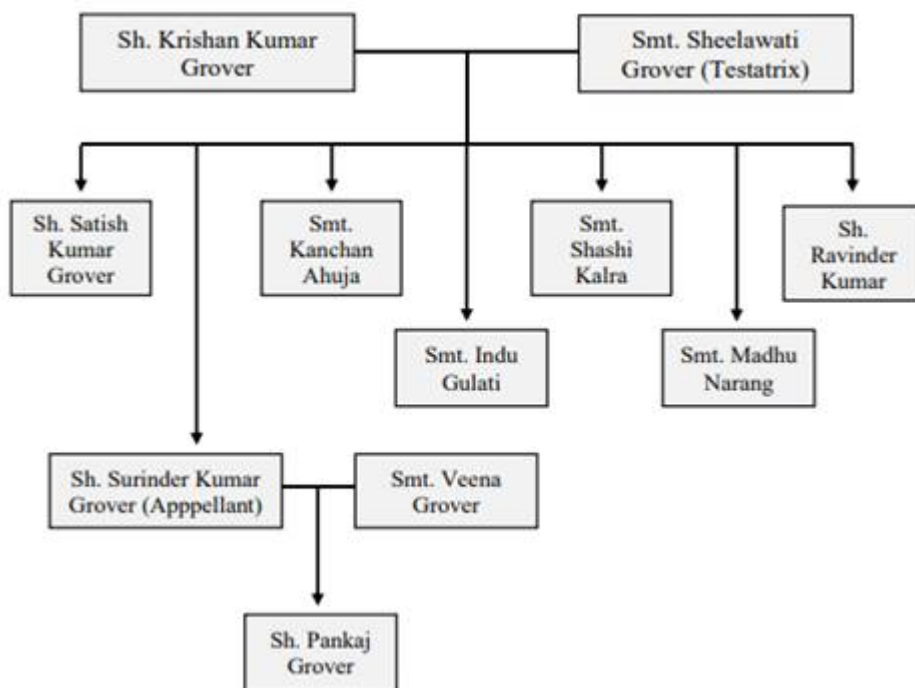
unregistered Will dated 10.05.1989 [hereinafter referred to as 'subject Will'] of his mother, namely, Late Smt. Sheelawati Grover [hereinafter referred to as 'Testatrix'], who died on 23.05.1989. Vide the subject Will, property admeasuring 325 sq. yards, bearing No. H-4/5, Model Town, Delhi [hereinafter referred to as 'suit property'], was bequeathed in favour of the Appellant.

ii. CS(OS) 140/1997

The above mentioned partition suit was preferred by the other five children of the Testatrix (Respondents herein) against the Appellant and Sh. Ravinder Kumar Grover [hereinafter referred to as 'Sh. Ravinder'], seeking partition of the suit property of their mother, on the ground that she had died intestate and the suit property be partitioned by metes and bounds. The contesting Defendants in the said partition suit were the Appellant/Defendant No.1 and Sh. Ravinder/Defendant No.2, who was proceeded ex parte in the said partition suit. It is pertinent to note that the aforementioned two matters were consolidated vide Order dated 01.02.2005.

FACTUAL MATRIX:

3. Shorn of unnecessary details, the genealogical chart of the family, as well as the brief facts germane to the institution of the present two Appeals, are as follows:



4. The execution of the subject Will has been proved by examining the beneficiary of the subject Will, i.e., Appellant/PW1, two attesting witnesses, i.e., Sh. S.V. Goel/PW2 [hereinafter referred to as 'Sh. Goel'] and Sh. Harbans Lal Saini/PW6 [hereinafter referred to as 'Sh. Harbans'] and a scribe, i.e., Smt. Veena Grover/PW5 [hereinafter referred to as 'Smt. Veena'], who is the daughter-in-law of the Testatrix and wife of the beneficiary/Appellant. Further, the Respondents have examined Sh. Ravinder, Smt. Indu Gulati and Sh. Kamal Kumar Grover, son of Late Sh. Satish Kumar Grover [hereinafter referred to as 'Sh. Satish'].

5. It may be noted that on 06.02.1989, the Testatrix had allegedly executed another Will in favour of her husband, Sh. Krishan Kumar Grover [hereinafter referred to as 'K.K. Grover']. In respect of this Will, K.K. Grover had also filed a probate petition bearing no. 137/1993. However, on 13.05.1993, K.K. Grover filed an application for withdrawing the probate petition in respect of the Will dated 06.02.1989 and subsequently, on 17.05.1993, K.K. Grover withdrew his probate petition and also the objections filed by him in TEST.CAS. No. 38/2000 and also gave a statement that he has no objection to the grant of Letters of Administration in favour of the Appellant.

6. The subject Will has been discarded by the learned Single Judge on the following suspicious circumstances:

i. The signatures of the Testatrix appear at two distinct places on the subject Will and the signature affixed on the left-hand bottom portion thereof does not bear any plausible reason for its existence. It is, therefore, evident that a blank signed paper of the Testatrix was subsequently utilised for scribing of the subject Will.

ii. Neither the beneficiary nor the scribe nor any of the attesting witnesses has furnished any cogent or plausible explanation for the Testatrix having executed her signatures twice on the subject Will.

iii. The subject Will is a multi-folded document which has been folded four times, with three-folds appearing from left to right and one-fold appearing from top to bottom in the middle. The Will is required to be carefully preserved and because of folding, the signature affixed on the right-hand bottom part of the subject Will has been considerably effaced/mutilated.

iv. The Testatrix, having been educated only up to Class II, could not reasonably be expected to have dictated or caused the preparation of the subject Will without the aid of any prior draft or written instructions.

v. The subject Will is alleged to have been scribed on 10.05.1989 at the time when the birthday function of Sh. Pankaj Grover [hereinafter referred to as 'Sh. Pankaj'], who is the son of the beneficiary and the grandson of the Testatrix, was celebrated. However, no photograph of the said function has been produced. Moreover, no independent witness was examined to prove that the said function was organised on the given date.

vi. No explanation has been furnished as to why the Testatrix chose not to execute the subject Will at her own residence at Tagore Park, and instead did so at Model Town, i.e., the residence of her son/beneficiary under the subject Will.

vii. None of the witnesses has deposed that the Testatrix, on account of any strained or discordant relations with her daughters, had disinherited them under the subject Will.

viii. None of the witnesses has offered any explanation as to why the Testatrix did not disclose the execution of the subject Will to her husband, K. K. Grover.

ix. The beneficiary in Paragraph No.4 of the Affidavit has stated that his mother/the Testatrix celebrated the birthday of her grandson/Sh. Pankaj, however, there is no explanation why the birthday was not celebrated at Tagore Park at the residence of the Testatrix.

CONTENTIONS OF THE PARTIES:

7. Heard learned counsel for the parties at length and, with their able assistance, perused the paperbook along with the requisitioned record.

8. Learned counsel for the Appellant has contended that the suspicious circumstances, as reasoned by the learned Single Judge in the Impugned Judgment, do not stand and, therefore, ought to be disregarded. Further, the Respondents have failed to produce any cogent evidence capable of casting doubt on the genuineness of the subject Will.

9. The main ground which would vehemently be urged by the learned counsel for the Appellant would be that the learned Single Judge, on his own accord, raised doubts regarding the alleged suspicious circumstances in the execution of the subject Will. It would further be contended by the learned Counsel for the Appellant, that the grounds taken into consideration by the learned Single Judge were not even raised or pleaded in their objections or evidence led by the objector/Respondents before him.

10. Learned Counsel for the Appellant would contend that the subject Will stands proved as per the provisions of Section 68 of the Indian Evidence Act, 1872, since the Appellant had produced the attesting witnesses to the subject Will, being Sh. Goel and Sh. Harbans. Both the witnesses were cross-examined and they stated in their evidence that the Testatrix had dictated the subject Will to Smt. Veena and the subject Will was also signed in the presence of the witnesses. It is further urged by the learned Counsel for the Appellant that during the cross-examination of the witnesses, no question was suggested or put to them regarding the suspicious circumstances of the subject Will.

11. It would further be contended by the learned Counsel for the Appellant that the Respondents/objectors have also failed to prove that the signatures of the Testatrix were taken on a blank sheet, upon which the subject Will was subsequently written.

12. As respects the day on which the subject Will was drawn on, it would be contended by the learned Counsel for the Appellant that the mere fact that the objectors were not invited to the birthday party of the Appellant's son is not a

ground to raise suspicion pertaining to the execution of the subject Will. Further, the subject Will was drawn nearly three decades ago and in view of the same, the learned Counsel for the Appellant would urge that the learned Single Judge has erred in observing that merely because there were no photographs of the party, it would not tantamount to suspicious circumstances. At the time when the subject Will was drawn, possession of a camera was not common in every household.

13. The learned Counsel for the Appellant would further state that the subject Property has been bequeathed in favour of the Appellant by the Testatrix out of love and affection and as her last wish. It would further be stated that the non-mentioning of the daughters of the Testatrix in the subject Will is because the daughters of the Testatrix were married and well settled in their matrimonial houses. It would further be stated by the learned Counsel for the Appellant that the subject Will, being drawn in the year 1989, it was not uncommon at that time to not bequeath properties in the name of married daughters.

14. Per contra, learned counsel for the Respondents has contended that the learned Single Judge has rightly observed the suspicious circumstances surrounding the execution of the subject Will. In view of the same, the dismissal of the probate petition by the learned Single Judge was entirely justified.

15. It is contended by the learned counsel for the Respondents that the subject Will is a forged and fabricated document, which is, as alleged by the Respondents, to be written on a blank sheet of paper that already contained the signatures of the Testatrix.

16. Learned counsel for the Respondents would further argue that the signatures on the subject Will in question differ from that of the signatures placed on the Will dated 06.02.1989, which is evident to the naked eye. This raises suspicious circumstances as respects the subject Will, and therefore the subject Will and the signatures thereupon do not fulfil the requirements of Section 63(b) of the Indian Succession Act, 1925, to give effect to the subject Will.

17. Inter alia, the learned counsel for the Respondents would also urge that the Will, being an important document, has to be preserved properly; however, in the present case, the subject Will was folded multiple times and due to such preservation of the subject Will, the signatures affixed by the Testatrix have effaced/ gotten blurry.

18. In view of the aforementioned, the learned counsel for the Respondents would support the Impugned Judgment, stating that there is no infirmity in the same.

ANALYSIS AND FINDINGS:

19. At the very outset, a perusal of the subject Will reveals that the same is written on a plain sheet of paper in Devanagari script (Hindi). The Testatrix has appended her signature at two places on the subject Will, one towards the right-hand bottom

portion and the other approximately in the middle of the subject Will, slightly towards the left side of the page. Further, Sh. Goel and Sh. Harbans have attested the subject Will by appending their signatures thereon as attesting witnesses.

20. The subject Will is on a single page, wherein the Testatrix has recorded that her son, Sh. Satish, is carrying on a profitable business jointly with his father, while her other son, Sh. Ravinder, possesses his own house and factory. It is further recited therein that Sh. Ravinder is also engaged in business abroad, which he commenced after obtaining financial assistance from his father. Conversely, it is stated that the Appellant is not doing well in business and is unable to properly maintain his household. In view thereof, the Testatrix has bequeathed the suit property in favour of the Appellant, who, along with his family, is residing on the first and second floors and is in possession of two shops situated therein.

21. The beneficiary has produced the sale deed of the suit property, which was purchased by the Testatrix. Sh. Goel has stated that the subject Will was scribed at the birthday function of Sh. Pankaj. Thereafter, the Testatrix called both the attesting witnesses and the scribe inside the room and requested Smt. Veena to bring pen and paper to dictate the subject Will. During the cross-examination, Sh. Goel has further stated that the subject Will was executed in regard to a property No.H-4/5, Model Town, Delhi, in his presence. Further, Smt. Veena appeared on behalf of the propounder of the subject Will and deposed that she wrote the subject Will at the direction of the Testatrix.

22. Sh. Harbans has also deposed on similar lines as deposed by Sh. Goel and Smt. Veena. During the cross-examination, Sh. Harbans has stated that it is incorrect to suggest that the subject Will was not scribed on the dictation of the Testatrix in his presence, nor was it executed in his presence.

23. It is evident from the record that no explanation has been sought from either of the attesting witnesses, the scribe, or the beneficiary as to the reason for the Testatrix having affixed her signatures at two places on the subject Will. It is further pertinent to note that no suggestion has been put to any of the said witnesses, namely, the attesting witnesses, the scribe, or the beneficiary, that the subject Will was written on a blank paper already bearing the signature of the Testatrix.

24. Therefore, this Court is of the considered view that the learned Single Judge has erred in holding that no explanation was furnished by the attesting witnesses or the scribe as to why the Testatrix signed the subject Will twice. The burden to elicit such an explanation rested upon the persons who questioned the genuineness and due execution of the subject Will, and it was incumbent upon them to seek clarification from the attesting witnesses in that regard.

25. Further, from perusal of the subject Will, it is evident that the page on which the subject Will has been scribed has been folded four times. On length-wise, the subject Will has been folded from the middle, whereas on the breadth of the page,

the subject Will has been folded thrice. However, this should not be the ground to discard a signed Will. The manner in which the subject Will was preserved is a matter of personal perception and practice. In the present case, the subject Will had been handed over by the Testatrix to Smt. Veena, who is educated only up to Class VIII. She kept the subject Will multi-folded in her custody. However, such a mode of preservation of the subject Will, by itself, does not cast any doubt upon nor does it in any manner affect the validity or genuineness of the subject Will.

26. Undoubtedly, the signature of the Testatrix affixed on the right-hand bottom part of the page is mutilated due to multiple folds, however, on the left-hand bottom part, the Testatrix had appended her second signature which is clear and categoric. No effort has been made by the Respondents to prove that the Testatrix never signed the subject Will. Neither a handwriting expert has been examined nor has any other cogent evidence been produced by the Respondents to prove that the Testatrix had never signed the subject Will.

27. Similarly, the learned Single Judge has erred in discarding the subject Will on the ground that the draft of the subject Will was not prepared beforehand. A reading of the subject Will also proves that it has been written in a local dialect, namely Hindi, and the subject Will does not reflect the use of any legal terminology. Additionally, the Testatrix has also explained the reason for executing the subject Will in favour of the beneficiary, while excluding her other two sons. No evidence has been provided to establish that such reasons recorded in the subject Will are incorrect.

28. Further, it is also pertinent to note that though the Testatrix had studied only up to Class II, however, she had brought up as many as seven children and she had gained rich experience in her life, while staying in Delhi. Moreover, the subject Will, which does not contain any legal terminology, was scribed by her daughter-in-law, who had studied up to Class VIII. Hence, in light of the abovementioned reasons, this Court is of the considered view that there was no necessity of preparing the draft of the subject Will.

29. The correctness of the subject Will has also been doubted by the learned Single Judge on the ground that no photograph of the birthday function has been produced and no independent witness of the said function has been examined. Herein, it is evident that Sh. Pankaj was born on 10th May and it was his birthday and the correctness of this aspect is not challenged by the Respondents while cross-examining the witnesses. There is also no cross-examination of the witnesses about the birthday of Sh. Pankaj was not celebrated in the year 1989. Furthermore, in 1989, mobile phones had not yet arrived in India. Even cameras were not easily available to the general public. Hence, the absence of a photographer for a small gathering on the occasion of a birthday celebration, of a person who was not doing well in the business, cannot be a ground to discard the subject Will.

30. Similarly, the learned Single Judge has also erred in observing as to why the subject Will was not executed by the Testatrix at her place of residence, i.e., Tagore Park, instead of the residence of the beneficiary. It is evident that the Testatrix was the exclusive owner of the suit property, where the beneficiary, along with his family, was residing, and therefore, the subject Will was scribed at the place where the son of the Testatrix resides. Thus, in the absence of evidence of coercion, the doubting of the correctness of the subject Will on the ground that the subject Will was not executed at Tagore Park but at Model Town is not appropriate.

31. It is pertinent to note that a Will is a solemn wish of the Testatrix which should be honoured by the Court unless there are some surrounding suspicious circumstances which remain unexplained. The Objector is required to lay the foundation of the alleged circumstances and opportunity is required to be given to the attesting witnesses, as well as the propounder, to explain the same. It is not appropriate for the Court to rely upon alleged suspicious circumstances at the time of final decision without the foundation of the same having been laid, while granting opportunity to the attesting witnesses and the propounder to explain the same.

32. Further, while making a bequest, the Testator/Testatrix has to express his/her intention regarding the disposition of his/her property. It is not necessary that the testamentary document must be executed in favour of all the children, where circumstances do not indicate strained or adverse relations. The Testator or Testatrix is well within his or her right to bequeath the property in favour of any one or more of the children, or even in favour of any other person. In the present case, it is evident that all four daughters of the Testatrix were married and well settled in their respective matrimonial homes. Thus, the learned Single Judge has erred in observing that the attesting witnesses have failed to disclose that, due to bad relations with her daughter, the Testatrix had disinherited them.

33. Similarly, the learned Single Judge has also erred in observing that the subject Will was not disclosed by the Testatrix to her husband. This fact and reason can only be known to the Testatrix. However, it will be noted here that the husband of the Testatrix, though, filed a probate petition with respect to the Will dated 06.02.1989, allegedly executed by the Testatrix. But subsequently, withdrew the same, while admitting that the Will dated 10.05.1989 (subject Will) was the last Will of the Testatrix. This fact proves that even the husband of the Testatrix had admitted execution of the subject Will.

34. The last reason assigned by the learned Single Judge is wholly untenable. The beneficiary, in Paragraph No.4 of his Affidavit, has stated that the Testatrix celebrated the birthday of Sh. Pankaj. This fact has been stated as a gesture of respect and affection towards his mother. However, the learned Single Judge has discarded the subject Will on the ground that, had such a celebration taken place, it ought to have been held at the residence of the Testatrix in Tagore Park and not at Model Town. Such an inference is incomprehensible. Herein, the Testatrix has

appended her two signatures on the subject Will and the Respondents have failed to produce any cogent evidence to establish that the said signatures were not affixed by the Testatrix herself.

35. From reading of the subject Will, it is evident that the mother has bequeathed the suit property in favour of her son, who is economically the weakest amongst her three sons. Additionally, the execution of the subject Will has been proved by examining both the attesting witnesses as well the scribe. The Respondents have failed to impeach the credibility of their respective depositions, despite their lengthy cross-examinations.

36. Further, the learned counsel for the Respondents has contended that the signatures appearing on the subject Will are not identical to those found on the Will dated 06.02.1989. As already noted above, K.K. Grover had instituted a probate petition in respect of the Will dated 06.02.1989, however, the said petition was subsequently withdrawn. Consequently, the Will dated 06.02.1989 was never proved in accordance with the law. In such circumstances, the signatures on the subject Will are not amenable to comparison with those on the unproved Will dated 06.02.1989.

37. In these circumstances, it is expected of the Court to accept the validity of the subject Will unless there are strong suspicious circumstances suggesting otherwise.

CONCLUSION:

38. Keeping in view the aforesaid discussion, the Impugned Judgment is not sustainable and is hereby set aside.

39. Accordingly, Letters of Administration is issued in favour of the Appellant, whereas the suit for partition filed by Lt. Sh. Satish and four other children of the Testatrix shall stand dismissed.

40. Hence, RFA(OS) 39/2018 is dismissed, and FAO(OS) 91/2018 is accordingly allowed and disposed of in the above terms.