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

Reserved on: 06.11.2023

Date of decision: 17.11.2023

\+ TEST.CAS. 55/2015, I.A. 12483/2015 (appointment of LC.), I.A. 12484/2015 (stay), I.A. 14925/2015 (directions), I.A. 20834/2015 (Order XXXIX Rule 2-A, CPC) & I.A. 22163/2022 (directions)

MR. BHUPINDER SINGH & ORS ..... Petitioners

Through: Mr.Ashok Kumar Chhabra & Ms.Shefali Gupta, Advs.

versus

STATE & OTHERS ..... Respondents

Through: Mr.Amit Agrawal, Mr.Rahul Kukreja, Ms.Sana Jain, Mr.Satyajit Sarna & Ms.Reaa Mehta, Advs. for R-2 & 3.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. The present petition has been filed under Section 276 of the Indian Succession Act, 1925 seeking grant of probate of the Will dated 27.09.2012 executed by late Ms. Kanval Dhillon.

2. On 05.06.2015, the three Petitioners, Mr. Bhupinder Singh, Mr. Jaywant Singh and Mrs. Renu Dhindsa filed the present petition stating

that Ms Kanval Dhillon (hereinafter referred to as 'the testatrix'), who was unmarried, issueless and permanently residing in Delhi, had passed away on 03.05.2015. It was averred that they were executors of a Will dated 27.09.2012 executed by the testatrix and attested by her friends, Ms. Seema Bansal and Ms. Geetanjali J. Singh. They arrayed two private respondents in this petition, Mrs. Kiran Patki (Respondent No.2) and Ms. Komal Dhillon (Respondent No. 3), sisters of the testatrix.

3. It is the petitioners' case that after the testatrix passed away on 03.05.2015, they informed Respondents Nos. 2 and 3 about the existence of her Will. The petitioners told them that the testatrix had informed them of her Will dated 27.09.2012 (hereinafter referred to as 'the subject Will') being kept in a locker in her room in her residence at W-146, Greater Kailash-I, New Delhi. With the permission of these respondents and in their presence, the locker containing the Will was opened and the subject Will was recovered. This Will was found to have some overwriting and cuttings in it. It was read out and explained to Respondent Nos. 2 and 3. They asked for photocopies of the subject Will, which were made by the driver of Respondent No. 3 at a nearby market. Copies of the Will were then given to the contesting respondents. Since the subject Will stated to be executed by the testatrix contains overwriting, photographs of the same are being reproduced hereinbelow:-

WILL

I, **Kanval Dhillon,** d/o late Lieutenant General J.S. Dhillon, r/o W-146, Greater Kailash-I, New Delhi, aged 60 years, DO HEREBY revoke all Wills, Codicils and testamentary dispositions hereto-before made, and being of sound disposing mind, **DO HEREBY** make and declare this to be my last **Will** and **Testament**, namely:

1(a) I appoint my friends **Bhupinder (Tusky) Singh**, **Renu Dhindsa** wife of Anoop Dhindsa and **Jaywant Singh** resident of A2/17, Safdarjung Enclave New Delhi to constitute a Committee of Executors (**"Committee"**) to act by majority in the administration, conversion and/or distribution of my estate in accordance with this Will and to regulate their own functioning. If any of them is unable to act as such on account of death, disability or otherwise, the remaining Executors on the Committee shall elect a replacement from amongst my cousin **Ravinder Grewal Goswami** wife of Mukesh Goswami and my dear friend **Nimmi Singh** wife of Harinder Singh to act on the Committee, and if neither is agreeable, to appoint any one of the three children of my daughter Kiran Patki as a replacement. If there is a dead-lock on the Committee by votes being equally divided, the oldest member of the Committee by age present at the meeting shall have a second or casting vote.

Tusky / Jaywant / S.C. Verma - CA / 2 Executors

(b) In carrying out their functions, the Executors shall seek the assistance of **M/s. S.C. Verma & Co.** Chartered Accountants, who are my auditors and who are familiar with my affairs and my friend and lawyer **Shashivansh Bahadur**, and/or such other professionals as they may deem fit. The Committee shall be entitled to pay professional charges and reimburse themselves actual expenses incurred by any of them towards travel, telephone etc. from the available liquid assets of my estate. Other than re-imbursement for actual expenses as mentioned above, I would like each Committee member, my chartered accountant Mr.S.C.Verma, and my lawyer Mr. Shashivansh Bahadur to be paid Rs. 5 (five) lakhs each as a token of my

Kanval Dhillon

appreciation for this thankless job. The mechanism for this payment shall be devised by the Committee itself.

(c) The Committee shall have absolute freedom and discretion to carry out its functions (including authorizing one from amongst them to act on the Committee's behalf) and duties and to open and operate Bank account(s) and to sign, execute and register, if necessary, any deed or document needed to deal with, sell, convert and/or distribute any of my assets or to discharge any of my liabilities and to do and perform all other acts, deeds, matters and things (including prosecuting and defending any legal action) necessary to act in accordance with this Will.

2(a) I have a 1/3 (one-third) undivided share in residential immovable property bearing No. W-146, Greater Kailash Part-I, New Delhi – 48, which, I have inherited from my parents. If this house stands unsold at the time of my death, I give and bequeath my said 1/3 (one-third) undivided share in this property to my nephews **Rohan** and **Dhiren Patki**, sons of my sister Kiran D. Patki, in equal shares, absolutely and forever.

(b) I own and possess personal jewellery which listed in **Annexure "A"** herein. I give and bequeath ~~one large complete set to each of~~ Rohan, Dhiren and Yashodhra (children of my sister Kiran.D.Patki). I give and bequeath the balance of the said jewellery or such of it or any additional jewellery that I may possess at the time of my death to my cousins **Ravinder, Anita, Harpreet** (daughters of Dr. H.B.S. Grewal), to my friends **Nimmi Singh and Renu Dhindsa**, to **Arjun Singh and Simran** (children of my dear friend Manjula Singh), and to **Sahil and Manav Prabhu** (children of my dear friend Archana Prabhu), in equal shares, absolutely and forever. The distribution of the jewellery amongst the said beneficiaries shall be done by the Committee, whose decision shall be final and binding on each beneficiary and shall not be challenged.

(c) I also own and possess a large number of paintings and artworks which are listed in **Annexure B-1** herein. I give and bequeath the same to the person listed against each entry in Annexure B, absolutely and forever.

(d) I also own substantial furniture that is laid out in my residence W-146 Greater Kailash 1, New Delhi. I give and bequeath the said furniture to Rohan, Dhiren and Yashodhra, children of my sister Kiran.D.Patki, in equal shares, absolutely and forever.

3. Other than my share in Property No. W-146, Greater Kailash-1, New Delhi and my jewellery, artworks and furniture already dealt with in paras 2(a) to (d) above, I am also the absolute owner of the following immovable and movable assets (hereinafter collectively referred to as the **"Remaining Estate"** which expression shall also mean and represent that owned and possessed by me at the time of my death after taking into account accretions thereto or depletions therein until the time of my death), namely:

Business

(i) My share, rights, entitlements and interest whatsoever in the partnership business known and styled K. Dhillon & Co. a registered partnership firm of which me and my sister Mrs. Kiran D. Patki are partners and in which I have 95% share.

Immovable Property

(ii) The entire property bearing D-593 Chittaranjan Park, New Delhi which has a building containing six apartments, and one apartment on the second-floor of property bearing D-674, Chittaranjan Park, New Delhi all currently being run as serviced- apartments, and this business is known as Lotus Holdings and is managed by Deepak Sachdeva under arrangement with me on a profit-sharing basis in which he has 25% share and I have 75% share. This arrangement will come to an end on my death and save for his 25% share of the profits, if any, uptill the date of my death, Deepak Sachdeva will have no other claim to the said business. No part of these properties/apartments or any asset, furniture, equipment, fixtures or fittings in these apartments belongs to Deepak Sachdeva, and belongs exclusively to me.

closed down Looking to sell.

(iii) Residential Flat bearing No. 1-B, Rajhans 33, Prithviraj Road, New Delhi.

Sold

(iv) Residential property constituting three flats i.e. Ground floor/basement, First floor and Second floor in a building on plot no. D-134, South City-1, Gurgaon.

(v) Commercial Flat measuring approx. 608 sq. ft. bearing No. 210, Mansarover Building, 90, Nehru Place, New Delhi.

(vi) Residential Flat bearing no. 3-C, East Wing, Fernhill Gardens, 46, Ring Road, H.S.R. Layout, 6th Sector, Koramangala, Bangalore.

Leave from Kiran Patki

Kanwal Dhillon

(vii) The entire property (land and building) bearing No. D-593, Chittaranjan Park, New Delhi.

(viii) The basement and terrace (with terrace rights and one servant-quarter and toilet on the said terrace), of property bearing no. D-674, Chittaranjan Park, New Delhi.

(ix) Residential Flat No. 504- Tower 3 in Unitech "Habitat", Greater Noida (covered area approx. 2096 sq. ft.).

Movable Property

(x) Monies in banks and deposits, units of Mutual Funds, Bonds, Shares and Securities, benefits on the Life Insurance policies, personal and household effects. An indicative list of mutual fund investments as on September 25, 2012 is annexed hereto as **Annexure B-2**.

4. Upon my death, and as a first step, the Committee shall convert my entire said Remaining Estate into cash and in doing so:

(a) As soon as possible after my death, the Committee shall make an assessment of my personal liabilities towards taxes, statutory dues and such like as well as of professional and administrative charges, reimbursable expenses, (including payment to be made to the Committee members as indicated in Para 1(b) above), likely to be incurred in the conversion and distribution and interim maintenance of the said Remaining Estate in accordance with the following paras of this Will, and a sum equivalent to such estimate should be kept aside from my available cash/liquid assets till all liability is discharged and assets distributed in terms hereof (hereinafter referred to as the "**Contingency Fund**").

(b) The said partnership business / firm namely K. Dhillon & Co. shall dissolve upon my death. The assets and liabilities of both the said businesses shall be determined and dealt with in accordance with law and my share on dissolution shall be determined and reduced to cash.

both may close/continue with it? or we may have to continue for another year, if NMC wants it.

(c) All immovable properties will be sold and reduced to cash. The pre-sale expenses e.g. payment of arrears, valuations, legal and professional charges etc. shall be met from the Contingency Fund, and the post sale expenses, from the proceeds of sale. If any said immovable property is tenanted, effort should be made to evict the tenant before the sale and to get maximum value, but not more than

Kanwal Dhillon

12 months from the date of my death should be spent to obtain vacant possession, failing which the property should be sold with the sitting tenant.

(d) All mutual funds, fixed deposits, bonds, securities etc. should be redeemed and/or sold or encashed.

5. I give and bequeath the cash generated from conversions in para 4 above together with the balance remaining, if any, in the Contingency Fund, and notwithstanding any nomination made by me while depositing/investing any money, to persons and for amounts listed against each in **Annexure 'C',** absolutely and forever. If any beneficiary in Annexure 'C' is not alive to receive the bequest at the relevant time, or if a bequest fails for any reason specified in this Will or in its annexures, his/her said bequest shall be equally divided between all other beneficiaries named in Annexure C. If the generated cash is insufficient to fund the bequests, each bequest shall be proportionately reduced, and in case of a surplus, the said surplus shall stand bequeathed as under:

(i) Upto Rs. ~~One~~ 25 Lakhs crore to the **Shirdi Sai Baba Trust**. I would request my friend Renu Dhindsa and Manjula Singh to personally go to Shirdi and make the said donation in my name as a gesture of my all encompassing love for Baba, and (Cat cost from Contingency Fund)

(ii) ~~the balance if any, to~~ A sum of 75 Lakhs to 90 to **Mata Amrit Anandmayi Math, Amritapuri,P.O. Kolam-690525, Kerala**, absolutely and forever.

6. If the Committee is in doubt whether or not a particular asset is covered by this Will, such asset(s) shall stand bequeathed to my two nephews **Rohan Patki** and **Dhiren Patki** and my niece **Yashodha Patki** in the following shares, absolutely and forever:

Rohan Patki: 50%

Dhiren Patki: 30%

Yashodha Patki: 20%

7. In the event of a stroke, accident etc. where I am unable to execute normal day to day activities, and am confined to bed, I should not be put on life support systems.

Kamal Dhindsa

8. It is my wish that upon my death, my organs be immediately donated to the extent possible to recognized hospitals/institutions which by law are in a position to accept them. After the Akhand Path/Bhog, the Committee should feed a thousand poor people, not in sorrow but in joyous remembrance and the expense for the same should be budgeted for and incurred in and from the Contingency Fund.

IN WITNESS WHEREOF I Kanval Dhillon abovenamed have signed this Will at New Delhi on this 27th. day of September 2012 in the presence of the below mentioned witnesses:

SIGNED & DELIVERED by **Kanval Dhillon** |
Testator above named in our presence, and |
we have signed this Will below as witnesses | Kanval Dhillon
in the presence of the said Kanval Dhillon and |
in the presence of each other. |

1. Signature Seema Bansal

   Name SEEMA BANSAL

   Address 97, SUNDER NAGAR NEW DELHI - 110003

2. Signature Geetanjalei J Singh

   Name GEETANJALEI J. SINGH

   Address B-10, WESTEND, RAO TULA RAM MARG. N. DELHI - 110021.

4. Notice was issued in the petition on 22.06.2015. Citation was published in the newspapers 'Statesman', Delhi edition and 'The Hindu' Bangalore edition. In response thereto, except Respondent Nos. 2 and 3, no other party has come forward to file any objections to the subject Will. In accordance with the rules, a valuation report has also been filed by the Revenue Authorities.

5. The following issues were framed in this case on 24.05.2016:

i. Whether the Will dated 27.09.2012 as propounded by the petitioners is an authentic, legal and validly executed last and final Will of the deceased Ms. Kanval Dhillon? OPP

ii. Whether the factual mistakes, cutting and overwriting and other suspicious circumstances as detailed in para 'G' of the objections can be termed as minor and be ignored? OPD

iii. Relief

6. In support of their case, the petitioners examined seven witnesses including themselves. Petitioner No.1 was examined as PW3, Petitioner No.2 as PW1 and Petitioner No.3 as PW2. They also examined Ms. Seema Bansal, an attesting witness to the subject Will as PW4, Mr. Gurmeet Singh an employee of the testatrix (PW5), Mr. Prabhas Kumar, Standard Chartered Bank Relationship Manager of the testatrix (PW6) and Mr. Rohit Yadav, HDFC Bank Relationship Manager of the testatrix (PW7).

7. Opposing the petition, the respondents examined six witnesses, with Respondent No.2 examined as RW1, Mr. Amolinder Singh Bal, real estate agent of the testatrix (RW2), Lt. Col. (Retd.) Ravi Indra Singh Verdi, a family friend (RW3), Lt. Gen. Sarabjit Singh Grewal, a family friend

(RW4), Mr. Arun Pathak, service provider (RW5), and Mrs. Pavitra Rawat, domestic help of the testatrix (RW6).

8. The learned counsel Mr. Ashok Chhabra made submissions on behalf of the petitioners, and the gist thereof is as under:

i. The testatrix who was unmarried and issueless resided alone in Delhi without her immediate family. After the demise of their parents, while Respondents 2 and 3 continued residing in Mumbai and Paris respectively, the testatrix continued to reside in the family home at W-146, Greater Kailash-I, New Delhi. This property was, however, the joint property of the three sisters. So while Respondents 2 and 3 wanted to sell it, the testatrix did not– this led to disputes between them in 2010. The testatrix filed a suit in this Court seeking permanent injunction against the Respondents 2 and 3, whereas they filed a suit for partition of the joint property. These proceedings were pending not only when the testatrix executed her Will on 27.09.2012 but also when she passed away on 03.05.2015. Therefore, the relations between them were strained when the subject Will was executed and even at the time of her death

ii. The three executors of the subject Will, the petitioners herein, are childhood friends of the testatrix who were well-known to the testatrix and her sisters. Most of the beneficiaries of this Will were known to Respondents 2 and 3 since they used to stay with the testatrix in her home whenever they visited Delhi. Inasmuch as Respondents 2 and 3 claim that they are natural legal heirs or Class II heirs of the testatrix, they did not show

any care or concern for her. Thus, without any immediate family in the city, the testatrix was quite reliant on the petitioners. In fact, while she battled terminal cancer which ultimately led to her death in 2015, she was looked after by the petitioners. This is evident in the fact that when the testatrix visited Mumbai for medical treatment, she was accompanied by and cared for by Petitioner No.3, and not Respondent No.2who despite residing in the city did not visit her sister in the hospital. For that matter, the testatrix regarded Petitioner No.1 as her own brother; he had performed the last rites for her mother in 2004. It was in these circumstances that the petitioners were made executors of the subject Will.After making her Will on September 27, 2012, the testatrix sent a communication by envelope on 04.10.2012 to all the petitioners telling them about execution of the subject Will and where it was kept. The testimony of all the petitioners, PW1, PW2 and PW3 established that they had been informed of the subject Will by the testatrix. Exhibits PW3/1 to PW 3/3 placed on record is the communication sent to PW3 by the testatrix. Further, the Will had been stored in a safe locker in the testatrix's house, and the petitioners did not know the code to open and close the locker, only the testatrix and her sisters knew of it. The petitioners, therefore, have approached this Court not for any personal gain but only to see to it that the true wishes of the testatrix are carried out. Barring Petitioner No.2, who has been bequeathed

Rs. 20,00,000/- under the subject Will, the other Petitioners do not stand to make any material gain from execution thereof.

iii. Insofar as the signatures on the subject Will are concerned, the attesting witnesses PW4/Ms. Seema Bansal had stated in her evidence that she and the other attesting witness, Mrs Geetanjali J. Singh had placed their signatures on the Will at the specific request of the testatrix who had brought the Will with her to PW4's residence in Sundar Nagar. This testimony remained unrebutted. Therefore, the two attesting witnesses and the testatrix were present in the house when the subject Will was signed by the former. Further, the signatures of the testatrix were identified by the attesting witnesses and admitted by Respondents 2 and 4. The answers to Questions 71, 72, 74, 76, 77, 78 and 79 given during cross examination by Respondent No. 2, and to Questions 33 to 36 given during cross-examination by RW4 contain this admission. Given the aforesaid, there is no merit in the respondents' plea that the petitioners did not lead cogent evidence to establish the authenticity of the subject Will. The evidence of PW4 that the attesting witnesses had affixed their signatures together in the presence of the testatrix at her express request, coupled with the admission during cross examination by RW1, who was conversant with her sister's signature, that the signature on the subject Will belonged to the testatrix, there were no suspicious circumstances surrounding the Will. The statement of PW4 that she did not remember whether the testatrix had signed the

subject Will when the former signed as an attesting Witness cannot void the Will as a witness statement must be read holistically and reliance in this regard was placed on the decisions in ***Ganesan v. Kalanjiam, (2020) 11 SCC 715*** and ***Hari Singh & Anr. vs. State & Anr. 2010 (120) DRJ 716***. A stray inconsistent statement in one part of the witness' evidence cannot discount the entire testimony given by the witness. The decision in ***V. Prabhakara vs. Basavraj K. (Dead) by Legal Representatives & Anr. (2022) 1 SCC 115*** was then relied upon to contend that all relevant materials ought to be considered by a court of law at the time of appreciating evidence. Ultimately a testamentary court is not a court of suspicion, but that of conscience and it is with this perspective that the plea of probate ought to be examined.

iv. Insofar as the state of mind of the testatrix is concerned, she was thinking clearly when she made the subject Will. In fact, the bequeathal is not so unnatural that the testatrix could not have made it. The decisions in ***Hari Singh (supra)*** and ***Gurdev Kaur & Ors. vs. Kaki and Others. (2007) 1 SCC 546*** establishes that a court of law cannot decide the correctness of the testator's decision in their Will. Instead, the duty of the Court is to ascertain whether the Will presented for grant of probate is truly the last one made by the deceased and whether it is the product of a free and sound disposing mind. In the present case, the testatrix gave her 1/3rd share in the joint family property at Greater Kailash Part-I along with some jewelry to

her sister's children, even though she was embroiled in litigation against her sisters at the time. She also wrote to inform all executors of the existence of the subject Will, its place of storage and her wish to have it adhered to in the event of her death. All the executors and beneficiaries of the Will are long-term friends of the testatrix. This shows that the testatrix was able to make decisions for herself and give away her things how she wanted to, without any outside influence. There was nothing unnatural in the bequeathals made.

v. Finally, the decisions in ***Dayanandi vs. Rukma D. Suvarna & Ors. (2012) 1 SCC 510*** and ***G. Gopal and etc. vs. G. Nagarathinam & Anr. 2006 SCC Online Mad 263*** are relied upon to contend that Section 71 of the Indian Succession Act. 1925 (hereinafter referred to as 'the Succession Act") mandates that any changes made to a Will after its execution ought to be carried out in the same way in which the Will was executed, in order to be valid. Any corrections made in the Will, if not signed/attested, cannot be treated as valid. In this case, PW4 had categorically stated that even though she had seen the cuttings and overwriting in the subject Will, which appeared to be in the handwriting of the testatrix, she was not present when the Will was extracted from the locker by the executors, nor when the testatrix had made those corrections. Since the changes/corrections were not signed or witnessed, they cannot, in view of s.71 of the Succession Act, be considered valid. Therefore, the Will dated 27.09.2012 as originally signed and

executed ought to be considered the final Will of the testatrix and the overwriting and cuttings therein ought to be disregarded.

9. Per contra, learned counsel Mr. Amit Aggarwal made submissions opposing the grant of probate on behalf of Respondents 2 and 3, and the gist of his contentions are as under:

i. The evidence presented by the petitioners to prove the execution of the Will does not meet the requirements of Section 63 of the Indian Succession Act. According to Section 63(c), the testator must first sign the Will, and the attesting witness must either witness this signing or receive a personal acknowledgement from the testator that they have signed the Will, before affixing their own signature thereupon in the presence of the testator. In this regard, reliance is placed on the decisions in ***Sant Lal Mahton vs. Kamla Prasad &Ors. 1951 SCC 1008***, ***Virendra Singh vs. Kashibai (1998) 2 MPLJ 203*** and ***Rajkumari & Ors. vs. Surinder Pal Sharma 2019 SCC Online SC 1747***. Therefore, it will not be correct for the Will to be attested by the witnesses before it is signed by the testator, in support whereof the decisions in ***Girja Datt Singh vs. Ganeotri Datt Singh AIR 1955 SC 346*** and ***Robert Prabhakar vs. David Ebenezer 2000 SCC Online Mad 1081*** were relied upon. Also the decision in ***Yumnam Ongbi Tampha Ibemi Devi vs. Yumnam Joykumar Singh & Ors. (2009) 4 SCC 780*** was relied upon to contend that the attesting witness ought to be able to depose to the testator having affixed their

signatures/mark on the Will and also of each of the attesting witnesses having signed the Will in the presence of the testator. In this case, the attesting witness PW4 verified that the other attesting witness, Mrs. Geetanjali J. Singh signed the subject Will in her presence and that of the testatrix. However, in her cross-examination she admitted that she did not remember the testatrix signing the Will in her presence or the date on which the Will was signed by the testatrix. She also stated to not remember whether the testatrix had signed the Will at all. Rather, she merely stated having seen the subject Will, the annexures thereto, and recognizing the signatures thereupon. Even so, she stated that the annexures were not signed by the testatrix in her presence. Once the attesting witness deposed to not remember whether the Will was signed by the testator in their presence, no presumption could be drawn of a valid Will having been executed. Reliance was placed on the decisions in ***Shri Narain Singh Vs. The State 2014 SCCOnline Del 3433*** and ***Surinder Kumar Grover vs. State & Ors. 2011 (122) DRJ 23***. to contend that when the petitioners had failed to prove that the subject Will was attested in the correct manner, it was clear that their plea for grant of probate was bound to be rejected since lack of clear evidence regarding the signing of the Will by the testatrix rendered the subject Will invalid. Moreover, the petitioners' reliance in this regard on the decision in ***Ganesan v. Kalanjiam, (2020) 11 SCC 715*** was misguided because in that case it was an admitted position that the attesting witness

had received a personal acknowledgement from the testator regarding the signing of the Will. In contrast, the attesting witness in this case, PW-4, did not remember whether the testatrix had signed the Will in her presence or not.

ii. The evidence of PW4 also suffers from contradictions inasmuch as her Affidavit filed along with the petition stated that the subject Will contained signatures of the testatrix which had been made in her presence, but during cross-examination, she denied remembering the testator signing the Will in her presence or even the date on which the testatrix had affixed her signatures. The petitioners presented only one attesting witness for examination despite two witnesses having attested the subject Will. Reliance was placed on the decision in ***Sujata Kohli vs. State & Ors. 2019 SCC Online Del 8070*** to contend that inasmuch as the petitioners presented a single attesting witness, it was critical for her testimony to be sufficient to prove the execution of the subject Will. That was not the case here as her testimony was deficient, contradictory, unreliable and, therefore, the same ought to be discarded.

iii. The subject Will cannot be deemed to be the last Will of the testatrix given the numerous cuttings and overwriting therein which indicated that the circumstances of execution of the Will were suspicious and did not represent the last wishes of the testatrix. Reliance was placed on ***Apoline D'Souza vs. John D'Souza (2007) 7 SCC 225*** to contend that numerous cuttings in the Will is indicative of suspicious circumstances and

discloses that the testator wished to change the Will. The multiple cuttings and corrections in the Will read with the testatrix having struck off the date, 27.09.2012, from the envelope and writing 26.03.2015 instead indicate that she was desirous of changing the Will before she died. Therefore, the Will dated 27.09.2012 cannot be considered the last Will of the testator.

iv. Without prejudice to the aforesaid, having failed to discharge the requirements of s.68 of the Indian Evidence Act, s.71 thereof cannot come to the rescue of the petitioners in support of their plea that the communications dated 04.10.2012 can be relied on to prove valid execution of the subject Will. Reliance was placed once again on ***Rajkumari & Ors. vs. Surinder Pal Sharma 2019 SCC Online SC 1747*** to support the contention that Section 71 cannot come to the rescue of the petitioners who chose to examine only one attesting witness even though the other attesting witness was available to be examined. The benefit of s.71 of the Indian Evidence Act can inure to the petitioners only if both the attesting witnesses produced either deny the Will or fail to recollect the incident of its execution. If the testimony depicts a casual account of the execution and attestation of the document disregardful of truth, the benefit of s.71 would not be available to the propounder of the Will. In this case, since the testimony of PW4 was contradictory and the petitioners, having elected not to examine the other attesting witness, were clearly unable to prove the subject Will in

accordance with s. 68 of the Indian Evidence Act, 1872. Thus, it could not be said that the petitioners were able to prove execution of the subject Will by leading credible and impartial evidence in support thereof, which is a mandate of s.63(c) of the Succession Act.

10. Having considered the submissions of learned counsel for the parties and perused the record, it is now time to examine the two issues framed in the present petition.

11. To ascertain whether the authenticity, legality and validity of the subject Will, it is important to consider whether the evidence presented by petitioners proved the existence of the Will in accordance with the provisions of Section 63 of the Succession Act. As per Section 63 of the Succession Act, a Will can be admitted to probate when it is established that the testator has executed it by signing his name or affixing his mark thereto in a manner that clearly indicates an intention to render the document a valid Will, and he/she did so in the presence of the attesting witness, who also affixed their signatures in the presence of the testator.

12. The record shows that the handwriting and signatures of the testatrix on the Will have been identified and admitted by all parties, even RW1 who admitted as much during cross examination. The sole attesting witness examined to prove the Will was PW4, Ms. Seema Bansal and a reading of the Affidavits filed by her in these proceedings bear the following statements:

Affidavit in support of the petition

"1. ... and the said Will bears the signature of Ms. Kanval Dhillon who signed the Will in my presence and in presence of

the other witness. The said Will also bears my signature as witness and the signature of Ms. Geetanjali J. Singh as other witness."

Affidavit of Evidence-in-Chief (Exhibit PW4/A)

"2. ...I say that I have seen the Original Will dated 27.09.2012 and annexures executed by Ms. Kanval Dhillon, and the said Will and annexures bear the signatures of Ms. Kanval Dhillon which I identify as I am conversant with the signatures of Ms. Kanval Dhillon and have seen her signing and writing.".

13. Amongst other things, in her Evidence Affidavit, PW4 confirmed that she was familiar with the signature and writing of the testatrix, and that the subject Will was in fact executed by her. During cross examination, PW4 stated that the second attesting witness, Mrs. Geetanjali J Singh was her niece. She was present at PW4's residence when the subject Will was brought by the testatrix. During cross examination an inconsistency arose when PW4 initially stated that she was not sure who brought the subject Will to her, but later admitted to recollecting that the testatrix had brought the subject Will to her house in Sunder Nagar. The respondents also pointed another contradiction made by PW4 inasmuch as in her Affidavit in support of the petition she stated that the testatrix had signed the subject Will in her presence, but during cross-examination, she denied remembering the testator signing the Will in her presence or even the date on which the testatrix had affixed her signatures.

14. In my view the question as to whether the testatrix signed the subject Will in the presence of the attesting witnesses is in vain. The settled legal principle in this regard is that s. 63(c) of the Succession Act makes provision for an acknowledgment by the testator and attestation by witnesses in the

execution of a Will, the acknowledgment may take the form of express words, conduct, or a combination thereof, as long as it unequivocally demonstrates the testator's recognition of the Will's execution. When a testator requests someone to attest his Will, it is reasonable to infer that the testator is acknowledging the Will's execution since the Succession Act does not mandate that the testator sign the Will *in the presence of* the attesting witnesses only. This principle was expounded by the Hon'ble Supreme Court in its decision in ***Ganesan v. Kalanjiam, (2020) 11 SCC 715*** when it held as under:

> *"5. The appeals raise a pure question of law with regard to the interpretation of Section 63(c) of the Act. The signature of the testator on the Will is undisputed. Section 63(c) of the Succession Act requires an acknowledgment of execution by the testator followed by the attestation of the Will in his presence. The provision gives certain alternatives and it is sufficient if conformity to one of the alternatives is proved. The acknowledgment may assume the form of express words or conduct or both, provided they unequivocally prove an acknowledgment on part of the testator. Where a testator asks a person to attest his Will, it is a reasonable inference that he was admitting that the Will had been executed by him. There is no express prescription in the statute that the testator must necessarily sign the Will in presence of the attesting witnesses only or that the two attesting witnesses must put their signatures on the Will simultaneously at the same time in presence of each other and the testator. Both the attesting witnesses deposed that the testator came to them individually with his own signed Will, read it out to them after which they attested the Will."* ***(emphasis supplied)***

15. The aforesaid principle laid down in ***Ganesan (supra)*** makes it clear that a personal request by the testator to a person to attest his Will is

reasonable inference of the testator admitting that the Will had been executed by him. I am therefore unable to accept the respondents' plea that the decision in ***Ganesan (supra)*** is not applicable to the facts of the present case. In the light of the aforesaid decision having crystallized this principle in 2020, I do not deem it necessary to deal with the decisions in ***Sant Lal Mahton (supra) Girja Datt Singh (supra), Yumnam Ongbi Tampha Ibemi Devi (supra), Rajkumari (supra)*** or the decisions in ***Virendra Singh (supra), Robert Prabhakar (supra), Shri Narain Singh (supra),*** and ***Surinder Kumar Grover (supra)*** relied upon by the respondents.

16. In the light of this position, it may be apposite to now refer to the evidence of Ms. Seema Bansal PW-4, the attesting witness in this case. What emerges therefrom is that the Affidavit filed by her in support of the petition had been sent to her by one of the executors and contained the statement that she saw the testatrix signed on the subject Will. However nowhere in the Affidavit of Evidence filed by her do I find this statement reiterated.

17. It is noteworthy that though in her initial statement during cross examination she said that she was unsure as to who had brought the subject Will to her, subsequently she stated that she was able to recollect that the testatrix had brought the Will to her residence. Later in the same cross examination, when it was put to her, she specifically denied the suggestion that the subject Will had not been brought to her by the testatrix. She also stated that she and Ms. Geetanjali J. Singh signed the Will in each other's presence and the presence of the testatrix, which statement has not been seriously disputed. Ultimately, given that PW4 had affirmed that the attesting witnesses had signed the subject Will in each other's presence and

that of the testatrix, the fact that the testatrix had not signed the Will in the presence of PW4 is not material given the principle set down in ***Ganesan (supra).*** In fact**,** the testatrix personally presenting the subject Will for signatures of the attesting witnesses is, in my view, an acknowledgment of the Will's execution by the testator which is in consonance with the ratio of the decision in ***Ganesan (supra)***.

18. PW4 also stated that she had neither read nor been read the contents of the Will, nor did the testatrix read the same in her presence. But that pales in significance given the decision of a Division Bench of this Court in ***Jyoti Puri Vs. Pawan Gandhi 2018 (1) AD Delhi*** which held that there is no requirement in law that the attesting witness must be aware of the contents of the Will. Having suitably given evidence in support of the attestation of the subject Will, and the fact that the testatrix herself had presented the subject Will for attestation, I find that execution of the subject Will has been proved by the evidence presented by the petitioners. For that reason, the decision in ***Sujata Kohli (supra)*** relied upon by the respondents is inapplicable in the facts of the present case.

19. Before this Court, the respondents have urged by relying on the decision of the Hon'ble Supreme Court in ***Rajkumari (supra)*** that the petitioners cannot take the aid of s.71 of the Indian Evidence Act when they chose not to examine the other attesting witness. I find that nothing turns on this objection in view of my conclusion hereinabove that the testimony of PW4 when read as a whole sufficiently proves the valid execution of the subject Will as per s.63(c) of the Succession Act. Therefore, I find no reason to delve into the question as to whether s.71 of the Evidence Act can come

to the aid of a propounder of a Will who examines only one attesting witness.

20. Having held that the subject Will was validly executed in accordance with statutory provisions, I may now turn to the respondents' plea that the execution of the Will is shrouded in suspicion considering that despite there being no Class I heirs, the only 2 Class II heirs of the testatrix have been left out from the Will. That too, without assigning any reasons for excluding them in the first place especially when they were on cordial terms. It has been further urged that the numerous cuttings and overwriting on the Will is in itself a suspicious circumstance that warrants rejection of the subject Will. In order to appreciate this plea, it may be apposite to examine the circumstances surrounding the execution of the subject Will.

21. In their petition as also their evidence, the petitioners have stated that they were childhood friends of the testatrix and admittedly, the testatrix was very close friends with them. As a matter of fact, in her evidence, the Respondent No.1 appeared to be aggrieved by the closeness of the testatrix to the petitioners. When they were examined, each of the petitioners examined as PW1, PW2 and PW3 expressly stated that inasmuch as the testatrix was detected with Inflammatory Myofibroblastic Tumour, she was mentally alert, fully fit and conscious and was attending office on a day to day basis, taking all decisions, holding meetings, etc. They also stated that the testatrix was supervising and handling all her properties, and had obtained a loan to purchase a vehicle. Between 2012 and 2013, while undergoing treatment, she had visited them at their residences various times. They were also sent communications by the testatrix on 04.10.2012 informing them that the subject Will was kept in a sealed cover in her house.

In support thereof, PW3 who is the 1st Petitioner herein has placed on record the communication sent to him by the testatrix on 04.10.2012 and the same has been marked as Exhibits PW3/1 to PW3/3, which documents remained unrebutted and in fact not seriously disputed. The acknowledgement by the testatrix of the subject Will, in the form of her personally presenting the subject Will for signatures of the attesting witnesses, and the communication sent by her on 04.10.2012 to the petitioners about the existence and location of it, is further demonstration of the testatrix's acknowledgement of the Will's being executed.

22. The evidence given by each of the petitioners confirms that the testatrix was of sound disposing mind when she drafted the subject Will. At this point, the evidence given by the PW5, an employee of the testatrix assumes importance. He stated that his appointment with her firm as Manager (Finance & Administration) on 01.11.2012 was preceded by two interviews with the testatrix which she conducted personally. He also stated that all important instructions relating to the office, clients and foreign buyers were given to him by the testatrix, and she was in her complete senses and had full comprehension during this period. Moreover, even PW4 stated during her examination that the testatrix was not taking any extreme dosage of painkillers, and was not even taking the dosage of painkiller she had been prescribed as a part of her medical treatment. In fact, what emerges is that even the evidence led by the respondents is to the effect that the mind of the testatrix was poisoned and embittered against her sisters by the petitioners, not that she was mentally incapable. It is therefore evident that on 27.09.2012, when the testatrix executed the subject Will, she was clearly of sound mind.

23. The respondents have placed communications on record in support of their plea that the relationship between them and the testatrix was cordial, even friendly, and therefore the subject Will which does even mention them by their names is clearly suspect. I have gone through each of these communications and given my thoughtful consideration to them. No doubt, these communications show that the testatrix was on speaking terms with her two sisters. The fact however remains that even at the time these communications were exchanged, the litigation between the respondents and the testatrix was pending. Their exclusion from the Will cannot, therefore, be said to be so improbable so as to invite suspicion.

24. Moreover, this has to be viewed in conjunction with the fact that under the subject Will, the testatrix had bequeathed her 1/3rd share in the family home and portions of her jewellery to her nephews and nieces, children of Respondent Nos.2 and 3. This in itself shows that the testatrix was not ignoring her sisters entirely, rather she chose to provide for their children with whom she continued to share a loving relationship. In the light of these specific aforesaid bequeathals in favour of her sister's children, I am unable to accept the plea that the testatrix's exclusion of her sisters from her Will is a suspicious circumstance that would be a ground to discredit the Will.

25. On this note, I proceed to examine respondents' objection regarding the effect of the numerous cuttings and overwriting in the subject Will and whether the same is indicative of it being surrounded by suspicious circumstances. To this, the petitioners have, besides urging that the overwriting deserves to be ignored on account of Section 71 of the

Succession Act, sought to contend that these cuttings were minor in nature and did not disturb the essence of the Will.

26. The respondents by relying on the decision in ***Apoline D'Souza (supra)***, have urged that cuttings and overwriting in the Will is a factor contributing to its suspicious circumstances, and shows that the same does not reflect the last Will and testament of the testatrix. Although this plea is attractive on the first blush, a careful perusal of the decision in ***Apoline D'Souza (supra)*** shows that it was not a simple case of cuttings in the subject Will that led to it being discarded by the Hon'ble Supreme Court. Rather, as is evident from paragraph 13 of that decision, the Court found many suspicious circumstances surrounding the execution of the Will, namely (i) the Will being typed in Kannada but the blanks therein being filled in English, (ii) lack of evidence to show that the contents of the Will were read over and explained to the testatrix, and that (iii) lack of satisfactory evidence led to prove that the testatrix was of sound disposing mind. It was this that led the Hon'ble Supreme Court to conclude in ***Apoline D'Souza (supra)*** that the events leading to the execution of the Will were marred with suspicion. This decision would not come to the aid of the respondents in this case.

27. As rare as it may be, it is not as if a Will presented for grant of probate can never have cuttings and overwriting. It is precisely for this reason that the Legislature in its wisdom enacted Section 71 of the Succession Act to provide a framework to deal with such situations. The statutory provision clearly delineates the cuttings that are acceptable and can be treated as the final wish of the testator, and those which are to be ignored.

28. As per Section 71 of the Indian Succession Act, any deletion, modification, or alterations made to a Will after its execution shall not have legal effect, unless the text or meaning of the Will has become illegible or indiscernible as a result of such alteration. The only means by which such alteration can have a legally binding effect is if it has been (i) executed in the same manner as a valid Will under the provisions of the Succession Act and (ii) if the testator signs and the attesting witnesses subscribe to the alteration in the margin or some other part of the Will opposite or near to the alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the Will.

29. The evidence given by PW4 stated that there was no overwriting when she signed the subject Will, and that she only saw them once the testatrix had passed away and a copy thereof had been sent to her by one of the executors of the Will. The petitioners therefore, by relying on the aforesaid statement of PW4, the express language of Section 71 of the Succession Act, and the decisions in ***Meenakshiammal (dead) through LRs &Ors. vs. Chandrasekaran & Anr (2005) 1 SCC 280*** and ***Sridevi & Ors. vs. Jayaraj aShetty & Ors. (2005) 2 SCC 784***, have urged that the overwriting and cuttings be ignored in favour of the originally typed Will that was executed.

30. The fact however remains that as numerous as these cuttings and overwriting in the subject Will are, they have not been introduced to the Will in accordance with the mandate of Section 71 of the Succession Act and must necessarily be ignored. The petitioners are correct in urging that while considering their plea for grant of probate, the cuttings and

overwriting in the subject Will be discarded and only the Will, as it was originally executed and attested in 2012, be taken into consideration.

31. That being said, the question that still survives for my consideration is whether there is any effect of these cuttings and overwriting, and should the existence thereof necessarily lead to the Will being discarded in entirety, as urged by the respondents. In my view, the respondents are justified in urging that in case there are cuttings and overwriting in a Will, the Court will have to examine the effect thereof regardless of whether they have been carried out as per Section 71 of the Succession Act. I am of the view that the effect of such unsigned cuttings and overwriting would always depend on the facts and circumstances of each case. Only if it is found that there are substantial changes sought to be introduced to a Will by the cuttings and overwriting present on it, can it be open for the Court to conclude that the Will is suspect and has to be rejected.

32. In the present case, what can be deduced from the cuttings and overwriting in the subject Will is that while the testatrix was desirous of incorporating changes to it, these corrections were not sweeping changes that materially affected the bequeathals made therein. It is quite likely that with passage of time the testatrix was contemplating making certain modifications to her Will which she could not unfortunately make. Even so, these changes she appeared to want to carry out cannot be characterized as material alterations in any event. The cuttings and overwriting seem to be made to *inter alia* delete properties which had been sold after the execution of the subject Will, or readjust amounts/movables bequeathed, or record her musings as a side note.

33. I, therefore, do not find that these side notes, cuttings and overwriting in the subject Will are as substantial to discredit the original Will which in my opinion contains an expression of the testatrix's final wish regarding the distribution of her assets. Rather, I am of the considered view that the nature of these cuttings and overwriting do not depart from the essence of the testatrix's wishes, who clearly did not want to bequeath any portion of her estate to her sisters. These cuttings and overwriting are evidently minor rearrangements that may have been contemplated by the testatrix in the 3 years since executing her Will and do not invite any suspicion. For this reason, I do not find any merit in the respondents' plea that the existence of the cuttings and overwriting in the subject Will are indicative of suspicious circumstances surrounding its execution.

34. In light of the foregoing analysis, I have no hesitation in coming to the conclusion that there is no basis for rejecting the validity of the subject Will in its original form as it existed at the time of its execution on 27.09.2012. This position is supported by the decision in ***Surendra Krishna Mondal v. Rani Dassi AIR 1921 Cal 677***, wherein the Calcutta High Court was considering a duly executed Will that contained some overwriting. At page 1065 of the judgment, the Honorable High Court opined as follows:

> *"There remains one objection which, though it looked formidable at one stage, does not require elaborate consideration. Attention was drawn to the fact that the word sthabar (immovable property) in the Will, looked like an interpolation, and specific evidence, it was said, must be adduced to show that the interpolation was made before execution and attestation. The alteration is admittedly not initialed as contemplated by section 58 of the Indian*

> *Succession Act. Now, it is well settled that where unattested alterations occur in a Will, the presumption of law is that such alterations were made after the execution of the Will, and in the absence of evidence rebutting the presumption, probate Will be granted of the Will in the original state, omitting the alterations. This rule has been affirmed by the Judicial Committee in Cooper v. Bockett [(1846) 4 Moo. P.C. 419.] , Greville v. Tylee [(1851) 7 Moo. P.C. 320, 328.], and has been subsequently, followed. In the goods of Sykes [(1872) L.R. 3 P. & D. 26, 27.] , In the goods of Adamson [(1875) L.R. 3 P. & D. 253, 255.] and PandurangHariVaidya v. Vinayak Vishnu Kane [(1891) I.L.R. 16 Bom. 652.] . The present case, however, is free from difficulty; there is positive evidence that the Will, as it now stands, was read over in its entirety before the testator executed it. The presumption mentioned is consequently rebutted by direct proof, and this accords with the obvious intention of the testator, who wished to make a disposition of his entire estate and not he intestate in respect of the most valuable portion thereof. It may be added that the presumption may be rebutted not merely by direct proof, but also by internal evidence and by inferences drawn from the condition of the Will: In the goods of Hindmarch [(1868) L.R. 1 P. & D. 307, 308.] , In the goods of Cadge [(1868) L.R. 1 P. & D. 543.] , In the goods of Tonge [(1891) 66 L.T. 60.]. As regards the marginal note also, there is no real difficulty; it was signed by the testator, and on the evidence, had been written out before execution and attestation." (**emphasis supplied**)"*

35. In view of the aforesaid discussion, this testamentary case is allowed. The present petitioners are granted Letters of Administration with respect to the Will annexed dated 27.09.2012 of late Ms. Kanval Dhillon on filing the necessary Administration Bond and Surety Bond, and the requisite stamp duty for which purpose the matter be placed before the Registrar General on 12.12.2023.

36. The petition is, accordingly, allowed and disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

NOVEMBER 17, 2023
Sr/kk/acm