

(2026) 08 DEL CK 4411

In the Delhi High Court, Principal Bench, New Delhi

Case No : RFA 73/2025 & CM APPL. 22552/2022

Kailash Chand & Anr.

APPELLANT

Vs

Prem Chand & Ors.

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Code of Civil Procedure, 1908 — Section 96
Indian Succession Act, 1925 — Section 276, 63
Indian Evidence Act, 1872 — Section 68

Citation : (2026) 08 DEL CK 4411

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Ms. Nishu Budhiraja, Mr. Bhupesh Narula, Ms. Rinku Narula, Ms. poonam Nagpal, Mr. Anugrah Ekka, Mr. Kanishk Taneja

Judgement

Neena Bansal Krishna, J.

1. The present Appeal under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as ?CPC?*) has been filed on behalf of the Appellants against the **Judgment dated 15.11.2010**, whereby the **Petition preferred by Respondent No.1/Petitioner Sh. Prem Chand under Section 276 of the Indian Succession Act, 1925 was allowed** and he was held entitled to **probate of the Will dated 13.12.2005**, registered on 28.12.2005. Letters of Administration for the management and supervision of the immovable properties mentioned in Schedule A to the Petition, was consequently granted in his favour.

2. The Petitioner/Respondent No.1 had filed a **Petition bearing No.87/10** under Section 276 of the Indian Succession Act, 1925 seeking probate of the Will dated 13.12.2005, registered on 28.12.2005, executed by Late Shri Nathu Singh.

3. **The brief facts as stated in the Petition**, are that the Petitioner/Respondent No.1 is the son of the deceased, Late Shri Nathu Singh (*hereinafter referred to as "the Testator"*), a Hindu, who had expired on 20.01.2008, at Delhi.

4. Late Shri Nathu Singh was survived by *six sons* namely, Prem Chand (*Petitioner*), Mahender Kumar, Jagdish Prasad, Kailash Chand, PyareLal, Subhash Chand, and *two daughters*, namely Darshana and Sheela.

5. Late Shri Nathu Singh during his lifetime, executed his first and last registered Will dated 13.12.2005, registered on 28.12.2005, bequeathing his land area measuring 2 Bigha, out of Khasra No. 331 (min.) Khewat No.134, Northern Side, situated in the village of Karkardooma, Illaqa Shahdara, Delhi and other movable and immovable properties in the favour of his son, Prem Chand, *Petitioner/ Respondent No.1*, to the exclusion of all other legal heirs. The details of the assets bequeathed under the Will, were set out in Schedule-A, annexed along with the Petition. All other children were specifically excluded and debarred from claiming any right or benefit, in respect of his movable or immovable properties.

6. The *Petitioner*, Prem Chand thus, *filed a Petition under S.276 of Indian Succession Act seeking grant of Probate of registered Will of his father, Late Shri Nathu Singh.*

7. Upon institution of the Probate Petition, citation was issued to the general public and Notices were served upon all legal heirs of the Testator.

8. Respondent No. 4, Mahender Kumar, the brother who was one of the attesting witnesses to the Will, supported the testament.

9. *The Petition was contested by the Appellants/Objectors, namely **Kailash Chand, Pyare Lal, Jagdish Prasad and Darshana, who filed a common Written Statement** denying the execution and validity of the alleged Will. Also, the Petitioner has suppressed the true facts and has not come with clean hands.*

10. *The objections taken were that the Probate Petition is not maintainable, as the Petition has not been signed properly by the Petitioner/ Respondent No.1.* Three different kinds of signatures are found on both, the Petition and the Affidavit, which made it difficult to determine which one was the original signature of the Petitioner.

11. Further objection was taken that the properties of the deceased Testator, *had already been partitioned amongst his children during his lifetime;* therefore, no question arises of bequeathing the properties in favour of the *Petitioner/ Respondent No.1. A partition* pursuant to *the family settlement*, was effected by Late Shri Nathu Singh in the presence of witnesses, whereby it was agreed that the properties would be allotted to the respective sons, where they were residing and had the possession thereof.

12. *The genuineness of the Will was also contested on the ground that the Testator was approximately 73 years of age at the time of executing the Will, but his age is not mentioned in the Will. It does not disclose any reason for excluding Respondent No. 2 to 8 from inheritance,* which creates doubt regarding its genuineness.

13. Further, only one property, namely the land situated at Karkardooma Village is mentioned on the first page of the Will, *and the alleged Will does not mention the numbers and addresses of the other properties, though the same were well known to Late Shri Nathu Singh.*

14. It was further alleged that the Petitioner/ Respondent No.1 prepared the false Will by concealing material facts, in conspiracy with Respondent No.4, Mahender, to grab all the assets of the deceased Testator.

15. The Petition was based on totally false, concocted and fabricated facts, and was liable to be dismissed with heavy cost.

16. **The Petitioner in the Replication**, re-affirmed the assertions as made in the Petition.

17. The **issues** on the pleadings, were framed on 10.12.2008, as under:

1. *Whether will dt. 28.10.05 executed by Sh. Nathu Singh is valid and genuinely executed in his sound disposing mind? OPP*
2. *Whether the petition is not maintainable in view of the preliminary objections raised by respondents? OPR 2,3,5 and 7*
3. *Whether the petitioner is entitled for probate as prayed for? OPP*
4. *Relief.*

18. **The Petitioner, Prem Chand, examined himself as PW-1** and deposed that the Testator had personally approached Advocate Shri D.K. Sharma for preparation of the Will dated 13.12.2005, registered on 28.12.2005, which was proved as Ex. PW-1/3. He stated that the Testator intended to bequeath the property situated at Village Karkardooma, along with his other movable and immovable properties, in favour of PW-1.

19. He further deposed that the Testator, Mahender Kumar, Advocate D.K. Sharma and PW-1 had gone to the office of the Sub-Registrar, where the Testator signed and affixed his thumb impressions on the Will and explained that he was bequeathing the properties to PW-1 as PW-1 had been looking after him.

20. **PW-2, Sh. Mahender Kumar, (Respondent No.4), one of the attesting witnesses to the Will**, corroborated the evidence of the Petitioner about the execution of the Will and that the Testator had voluntarily executed and signed the Will, as an attesting witness in the presence of the Testator.

21. **PW-3 Shri D.K. Sharma, Advocate, who had drafted the Will and was also the second attesting witness to the Will**, deposed that on the instructions of the Testator, he had first prepared a draft on stamp papers, but the same was destroyed in the presence of the Testator. Then, a fresh Will was prepared on plain paper, as per his instructions. The Will was read over to him, before he signed it in his chamber. PW-3 also signed the Will as an attesting witness.

22. **PW-4, Shri D.S. Rawat, UDC from the office of the Sub-Registrar, Geeta Colony**, produced the original register and deposed that the Will had been registered on 28.12.2005, vide Registration No.9595, Book No.III, Volume No.723.

23. **The Respondents examined RW-1, Mr. Jagdish Prasad** who deposed that *an oral partition had taken place, amongst the sons of the deceased*.

24. **RW-2, Pyare Lal & RW-3, Ram Phool Singh, in their respective testimony**, denied that the deceased had resided with or was exclusively looked after by the Petitioner. He however, admitted that the Petitioner had never been disowned by the deceased, though he volunteered that only Subhash had been formally disowned.

25. **RW-4, Kailash Chand, Appellant** admitted that no specific share or identifiable portion had ever been allotted by the Testator, to any particular son. He also admitted that the deceased Testator continued to carry on his milk business from Shop No.500, Bara Bazar and regularly attended the shop, till a few months prior to his death.

26. **The learned ADJ, upon appreciation of the oral and documentary evidence**, observed that the deceased Testator was in a sound disposing state of mind at the time of execution of the testament and that the plea of prior partition, remained wholly unsubstantiated. It was held that the Petitioner had successfully discharged the burden and **had duly proved the execution and attestation of the Will**.

27. Consequently, the Probate Petition was allowed and the Petitioner, Prem Chand, was held entitled to probate of the Will Ex. PW-1/3. **He was granted Letters of Administration for the management and supervision of the immovable properties mentioned in Schedule A to the Petition, subject to payment of the requisite court fee and furnishing of an administration bond-cum-surety bond**.

28. Aggrieved by the aforesaid Judgment, **the present Appeal** has been preferred by the Objectors/Appellants, namely, **Kailash Chand and Jagdish Prasad**.

29. **The grounds of challenge** are that the learned ADJ failed to appreciate the suspicious circumstances surrounding the alleged Will. It was contended that the Testator had several legal heirs and there existed no *plausible reason for exclusion of the remaining children from succession*.

30. The Petitioner, being the sole beneficiary, *had actively participated in the preparation, execution and registration of the Will*, thereby casting a heightened burden upon him, to dispel every legitimate suspicion.

31. Further, *the Will disclosed an unnatural disposition by excluding the remaining legal heirs, without assigning any reason*. The registration of the Will,

by itself, neither proved its due execution nor dispelled the surrounding suspicious circumstances surrounding the Will.

32. Moreover, the Petitioner's evidence suffered from material inconsistencies. Particularly, *PW-1* had admitted that their deceased father gave oral direction to distribute the properties equally amongst all the brothers, which was inconsistent with the recitals of the Will.

33. A reference is also made to the inherent contradictions in the testimony of *PW-1, PW-2 and PW-3* in regard to the preparation and execution of the Will.

34. It was further submitted that the Testator, *being of advanced age and suffering from cataract and cancer, lacked the requisite testamentary capacity to execute the Will. Moreover,* the inclusion of the acquired property comprised of Khasra No. 331 Min., Village Karkardooma, cast a serious doubt on the authenticity of the testament.

35. It was lastly submitted that the learned ADJ had erroneously rejected the Respondents' plea of *prior oral partition*, despite the oral evidence led in support thereof, which demonstrated that the Testator had already distributed his properties, during his lifetime.

36. It was therefore, stated that the Petitioner had failed to discharge the burden and that the learned ADJ committed a manifest error in accepting the alleged Will as the last valid testament of the deceased. *The impugned Judgment, therefore, is liable to be set aside.*

37. ***Per contra, Petitioner/Respondent No.1, 3 and 4 in their common Reply to the present Appeal*** have supported the impugned Judgment and submitted that the Will stands proved in accordance with the requirements of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872.

38. The execution and attestation of the Will has been duly proved through the testimony of the attesting witnesses. Furthermore, the registration of the Will has been corroborated from official records and there exists no material circumstance, which would justify rejection of the testament.

39. It was further stated that no medical evidence whatsoever, has been produced to establish that the Testator lacked testamentary capacity on the date of execution of the Will. Mere old age, illness or subsequent medical treatment, cannot invalidate an otherwise duly executed testamentary instrument.

40. It has also been submitted that the defense of *prior partition, remains wholly unsubstantiated.* The evidence of Petitioner/Respondent No.1, itself demonstrates that no written partition was ever affected and no witness was able to specify the date, manner or terms of the alleged partition.

41. It was lastly submitted that the *suspicious circumstances alleged by the Appellants,* were adequately explained from the evidence on record. No ground is

established, warranting interference with the findings of the learned ADJ.

Submissions heard and record perused.

42. Admittedly, Late Sh. Nathu Singh died on 20.01.2008 and was survived by six sons, *namely*, the Petitioner and Respondent Nos. 2 to 6, and two daughters, *namely*, Respondent Nos. 7 and 8. **Respondent Nos. 2, 3, 5 and 7 have contested the Petition**, whereas Respondent No. 6, Sh. Subhash, and Respondent No. 8, Smt. Sheela, furnished their respective "No Objection" to the grant of Probate/Letters of Administration in favour of the Petitioner, Prem Chand, on the basis of the Will dated 13.12.2005. Respondent No.4, Sh.Mahender Kumar (*brother*), deposed in favour of the Petitioner.

43. The following questions arise for consideration in the present Appeal:

(i) *Whether the execution and attestation of the Will dated 13.12.2005 stand duly proved in accordance with Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872?*

(ii) *Whether the Testator was in a sound disposing state of mind at the time of execution of the Will dated 13.12.2005?*

(iii) *Whether the Will is surrounded by suspicious circumstances?*

(iv) *Whether the plea of prior oral partition of the properties of the Testator stands established from the evidence on record?*

(v) *Whether the impugned Judgment suffers from any illegality, perversity or misappreciation of evidence warranting interference by this Court in appellate jurisdiction?*

I. Whether the execution and attestation of the Will dated 13.12.2005 stand duly proved in accordance with Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act?

44. The first aspect in the Probate Petition is to establish due execution of the Will. *Section 63 of Indian Succession Act, 1925* provides the requisites of a valid Unprivileged Wills. It reads as under:

"63. Execution of unprivileged wills.-Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 1*[or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:-

(a) *The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.*

(b) *The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.*

(c) *The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a*

personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

45. The essential requirements for the valid execution of a Will are: **firstly**, that it must *have the signatures of the testator*, thereby authenticating his intention to execute the Will. **Secondly**, the Will *must be attested by two or more witnesses*, each of whom should have seen the testator sign or put his mark on the Will. **Thirdly**, the Will *must be signed by the witnesses in the presence of the testator*, but it is not necessary that more than one witness should be present at the same time.

46. To prove the execution of Will, PW-1, Prem Chand, the petitioner deposed that their father, was the absolute owner of various movable and immovable properties and *while being in a sound disposing state of mind and fully conscious of the nature and consequences of his acts*, voluntarily executed the Will Ex.PW1/3 out of his own free volition, without any coercion, undue influence or pressure from any person, in his favour.

47. PW-1 Prem Chand also proved details of the properties constituting the estate of the deceased, Testator were set out in *Schedule-A, Ex.PW1/4*. The properties included House No.27/94/8A, Jwala Nagar, Shahdara, House No.27/94/8C, Jwala Nagar, property bearing No.369, DoongarMohalla, property bearing No.325/1, Farash Bazar, land comprised in Khasra No.331 Min. situated in Village Karkardooma, Shop No.500/3 situated at Bara Bazar, the amounts lying in the bank accounts maintained by the deceased, the LIC policy standing in his name and every other movable and immovable asset forming part of his estate.

48. PW-1, Prem Chand further deposed that during the latter part of his life, the Testator had been residing with him at House No.27/94/8A, Jwala Nagar, Shahdara and that he alone had been attending to his day-to-day requirements, medical treatment and overall care. Owing to the affection and confidence reposed in him, the Testator consciously decided to bequeath his entire estate in his favour and executed the aforesaid Will Ex.PW1/3 in his favour.

49. PW-1 further deposed that the Will was drafted on the instructions given by the Testator; executed after he understood its contents and thereafter, and was duly attested in accordance with law. It was further deposed that after execution of the Will Ex.PW1/3, the Testator personally appeared before the office of the Sub-Registrar, admitted execution of the testament and got the same registered on 28.12.2005.

50. In terms of Section 68 of the Indian Evidence Act, 1872, a Will, being a document required by law to be attested, required the proof by at least one attesting witness to establish its due execution. *In the present case, the Petitioner examined both the attesting witnesses to the Will.*

51. **PW-2, Sh. Mahender Kumar (Respondent No. 4)**, was the elder brother

of the Petitioner/beneficiary, who was actively involved in the preparation of the Will as well as was one of the attesting witnesses to the Will. He corroborated the testimony of PW-1 and deposed that the Testator had personally instructed the Advocate to prepare the Will. He further stated that the contents of the Will were read over and explained to the Testator, who, after understanding the contents, voluntarily executed it in his presence, and that he thereafter, signed the Will as an attesting witness, in the presence of the Testator.

52. PW-3, *Shri D.K. Sharma, Advocate*, who drafted the Will and was also the second attesting witness, *deposed that on the instructions of the Testator*, he had initially prepared a draft of the Will on stamp paper, which was subsequently destroyed in the presence of the Testator. *Thereafter, a fresh Will was prepared on plain paper, in accordance with the Testator's instructions.* The contents of the Will were read over and explained to the Testator, who, after admitting the same to be correct, signed the Will in his chamber. PW-3 also signed the Will as an attesting witness, in the presence of the Testator.

53. The testimony of PW-3 established that the deceased personally disclosed the manner in which he desired to bequeath his estate and executed the document only after acknowledging its correctness.

54. The registration of the Will was proved by PW-4, *Sh. D.S. Rawat, UDC* from the office of the Sub-Registrar, Geeta Colony, Delhi, who deposed that the Will Ex. PW-1/3 was registered in their office, on 28.12.2005.

55. All the witnesses were duly cross-examined by the Appellants, but no contradiction in the execution of the Will, could be elicited. The evidence on record, when appreciated in its entirety, consistently indicates that the deceased himself conceived the intention of executing the Will, personally furnished instructions for its preparation, understood its contents after the same had been read over and explained to him, voluntarily executed the testament and thereafter appeared before the office of the Sub-Registrar for its registration.

56. The testimony of the attesting witnesses inspires confidence and remains substantially unshaken in cross-examination. No material has been brought on record to cast any doubt upon the mental alertness or understanding of the deceased at the time of execution of the Will. *These circumstances unmistakably indicate that the deceased voluntarily, was fully conscious of the nature and effect of the testamentary disposition and the Will was prepared at his instance.*

57. It is therefore, held that the Will Ex.PW-1/3, in terms of S.68 Indian Succession Act and S.63 Evidence Act, is duly established.

II. Whether the Testator was of Sound Mind at the Time of Execution of Will:

58. The Appellants have next questioned *the testamentary capacity of the deceased* Testator by contending that, having regard to his advanced age and his ailments of cataract and cancer, he was incapable of *understanding the nature*

and effect of the testamentary disposition.

59. *PW-1, Prem Chand*, the Petitioner, in his cross-examination, admitted that the Testator had suffered from cancer and had received treatment at Dharamshila Cancer Hospital. He, however, denied that the Testator was not in his senses or lacked testamentary capacity at the time of execution of the Will. He clarified that the Testator underwent cataract surgery at Jain Hospital, about one to one-and-a-half years, *after execution of the Will*.

60. *PW-2, Sh. Mahender Kumar*, in his cross-examination denied that the Testator was suffering from cancer at the relevant time or that he suffered from any physical or mental incapacity, which rendered him incapable of executing the Will.

61. Likewise, *PW-3, Sh. D.K. Sharma, Advocate*, during his cross-examination, also denied that the Testator suffered from any physical or mental incapacity, and that cataract surgery was conducted only after one to one-and-a-half years from execution of the Will; he denied that the deceased was suffering from cancer at the relevant time.

62. Nothing material could be elicited during the cross-examination of *PW-1, PW-2 or PW-3* so as to discredit their testimony regarding the physical and mental state of the Testator, at the time of execution of the Will.

63. The Appellants, on the other hand, have claimed that the Testator was suffering from cancer and, therefore, did not possess the requisite mental capacity to execute the Will.

64. In this regard, *RW-1, Sh. Jagdish Prasad*, and *RW-4, Sh. Kailash Chand*, both sons of the Testator, deposed that prior to his demise on 20.01.2008, he was suffering from cancer and was undergoing treatment at Dharamshila Hospital and Research Centre, Vasundhara Enclave, Delhi. Their testimony, however, merely establishes that the Testator was suffering from cancer and was undergoing treatment prior to his demise in January, 2008. It does not establish that he was suffering from cancer on 13.12.2005, when the Will was executed, or that any such ailment had impaired his mental faculties or testamentary capacity at the relevant time.

65. *Similarly, the ground that the Testator was suffering from cataract does not advance the case of the Appellants.* *RW-2, Sh. Pyare Lal*, admitted in his cross-examination that the Testator underwent cataract surgery only in the year 2006. There is no evidence whatsoever on record to establish that on 13.12.2005, the cataract had impaired his vision to such an extent that he was incapable of understanding or executing the Will. Even assuming that the Testator was suffering from cataract at the relevant time, the same would not, by itself, establish any mental or cognitive impairment affecting his capacity to execute the testament.

66. Moreover, *PW-3, Sh. D.K. Sharma, Advocate*, had deposed that the Will was

read over to the Testator and he signed it after understanding its contents. The Will itself also carries an endorsement to the effect that '*this WILL is made out without any force, fear and undue influence*' and that the Testator had executed the same '*with my free will and without any pressure*' with his '*sound and disposing mind.*' The said recitals, read together with the testimony of PW-3, further reinforce the voluntary nature of the testamentary act.

67. Significantly, despite specifically alleging that the deceased was incapable of executing the Will, the Appellants failed to produce any medical record or examine any treating doctor to establish that the deceased was suffering from any ailment, as claimed, at the time the Will was executed in 2005, which impacted his mental faculties, rendering him incapable of understanding the contents of the Will.

68. Furthermore, the evidence of the Appellants' own witnesses belies the plea of incapacity. RW-2, Sh. Pyare Lal, admitted in his cross-examination that the Testator continued to attend the shop until about two months prior to his demise on 20.01.2008. Likewise, RW-1, Sh. Jagdish Prasad, admitted that the Testator continued to carry on his milk business from Shop No. 506, Bada Bazar, until the year 2008. Though RW-1 volunteered that he had purchased the said shop in the year 1993, by paying the consideration to his father, *his testimony nevertheless establishes that the Testator remained actively engaged in the business until shortly before his demise. These circumstances are wholly inconsistent with the allegation that he lacked the mental capacity to execute the testament on 13.12.2005.*

69. *Mere old age, impaired eyesight or subsequent illness cannot, by themselves, lead to an inference that a testator lacked the mental capacity to execute a valid Will.*

70. In *Sridevi v. Jayaraja Shetty*, (2005) 2 SCC 784, the Supreme Court observed that the mere fact that the testator was 80 years of age and died within 15 days of execution of the Will, was insufficient to doubt his testamentary capacity, when the attesting witnesses and the scribe had consistently deposed that he was in a sound state of mind and possessed his physical and mental faculties.

71. The relevant consideration is whether the testator was capable of understanding the nature and effect of the disposition at the time when the testament came to be executed. ***On the evidence produced on record, there is no material to conclude that the deceased was deprived of such understanding, on 13.12.2005.***

III. Whether there existed Suspicious Circumstances around the Execution of Will warranting its rejection:

72. The Appellants have assailed the genuineness of the Will by relying upon various alleged suspicious circumstances, *namely, the active participation and*

undue influence of the Petitioner, exclusion of the other natural heirs, inclusion of the acquired land situated at Village Karkardooma, the alleged oral instructions of the Testator stated to be inconsistent with the recitals of the Will.

73. It is a settled proposition of law that where suspicious circumstances surround the execution of a Will, the onus lies upon the propounder to dispel the same by cogent and satisfactory evidence. The circumstances relied upon by the Appellants are, therefore, considered hereinafter.

(a) Whether the Will was executed under Undue Influence of the Petitioner:

74. The principal submission advanced on behalf of the Appellants is that Prem Chand, the sole beneficiary under the Will, *actively participated in its preparation, execution and registration and that such participation, by itself, constitutes a suspicious circumstance sufficient to discredit the testament.*

75. In *Kavita Kanwar v. Pamela Mehta*, AIR 2020 SC 2614, while considering the plea of active participation of the propounder in the preparation of the Will, the Supreme Court held that participation of the beneficiary is only one of the many suspicious circumstances, which may be explained by the propounder. The question, therefore, is whether the evidence on record, sufficiently explains the said circumstance.

76. PW-1, as well as PW-2, Sh. Mahender Kumar, consistently deposed that it was the Testator who was inclined to execute the Will. He himself had called PW-3, Sh. D.K. Sharma, Advocate and had got the Will prepared. PW-1, PW-2 and PW-3, in their respective testimony, established that the deceased personally furnished instructions for the preparation of the testament, disclosed the manner in which he intended to bequeath his estate and voluntarily executed the document after its contents had been read over and explained to him. *The material on record, therefore, consistently indicates that the decision to execute the Will originated from the deceased Testator himself.*

77. So much so, PW-3, Sh. D.K. Sharma, Advocate, had explained that earlier, on the Testator's instructions, the Will had been prepared on a stamp paper but subsequently, on his wish, the Will written on stamp paper was torn and it was redrafted on a plain paper. There is no serious challenge to any of these aspects. The said circumstance further demonstrates that the Testator retained independent control over the preparation of the testament and was not acting under the direction or influence of any other person.

78. Moreover, it cannot be overlooked that as per PW-2, Sh. Mahender Kumar, the other brother, Sh. Subhash, was also present outside the Office of the Sub-Registrar. The very fact that Sh. Mahender Kumar, who has admittedly not been given any share in the property under the Will, was actively involved in the preparation and registration of the Will and has consistently deposed in support of the testament, further negates the allegation that the Petitioner alone

orchestrated the testamentary disposition.

79. Significantly, no material has been brought on record to establish that the contents of the Will were dictated by the Petitioner or that the instructions embodied therein did not emanate from the deceased himself. The mere fact that the Petitioner accompanied the Testator at the time of execution or registration of the Will cannot, by itself, establish undue influence. *The allegation of undue influence, therefore, remains a mere assertion unsupported by any cogent evidence.*

80. The circumstances attending the registration of the Will further reinforce the voluntary nature of the testamentary act. PW-2, Sh. Mahender Kumar, had deposed in his Affidavit of Evidence that the Sub-Registrar had also verified the facts from the Testator regarding the execution of the Will and its contents, and had confirmed that the Testator was executing the Will with his free consent, without any coercion, pressure or misrepresentation and in a sound disposing state of mind. ***There is essentially no cross-examination on this aspect of PW-2.***

81. Another significant aspect, which cannot be overlooked or ignored, is that the Will was duly registered, a fact which has been deposed by PW-2, Mr. Mahender Kumar, as well as, PW-3, Mr. D.K. Sharma, Advocate. The Registered Will Ex PW1/3, which has the signatures of the witness, i.e. PW-2, Mr. Mahender Kumar and Mr. D.K. Sharma, not at one place but in two places in consonance with their testimony that they had signed the Will in the presence of the Registrar, after he had convinced himself about the genuineness of the Will. *It is another factor, which lends support to the genuineness of the Will.*

82. Mere participation of a beneficiary in facilitating the execution or registration of a Will does not, by itself, constitute a suspicious circumstance. Unless such participation is accompanied by credible evidence of coercion, fraud, undue influence or manipulation affecting the free volition of the testator, it cannot invalidate an otherwise duly proved testament. *No such circumstance has been established in the present case. Consequently, the objection founded upon the alleged active participation of the petitioner is liable to be rejected.*

(b). Exclusion of the other natural heirs:

83. The Appellants have next contended that the Will is inherently unnatural, *since it excludes almost all the remaining legal heirs and bequeaths the entire estate in favour of Prem Chand.*

84. This contention, by itself, cannot invalidate the testament. It is well settled that a testator enjoys complete testamentary freedom to dispose of his estate in the manner considered appropriate by him. Mere exclusion of one or more natural heirs, without anything further, does not constitute a suspicious circumstance. The Court is concerned with the genuineness of the testament and not with the fairness or wisdom of the disposition made therein.

85. The legal position has consistently been recognized by the Courts. In *P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar*, 1995 Supp (2) SCC 664 : AIR 1995 SC 1852, the Supreme Court held that it is the duty of the propounder of the Will to remove all genuine suspicious circumstances, but there must be real, germane and valid grounds for suspicion, and not the fantasy of the doubting mind. Once the propounder dispels such suspicious circumstances, the Court has to give effect to the Will, even if it appears unnatural in the sense that it excludes, wholly or partly, the testator's near relations.

86. Thereafter in *Rabindra Nath Mukherjee v. Panchanan Banerjee*; (1995) 4 SCC 459, the Supreme Court observed that the circumstance of deprivation of natural heirs should not, by itself, raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession.

87. The said principle was reiterated in *Uma Devi Nambiar v. T.C. Sidhan*, (2004) 2 SCC 321, where the Supreme Court held that "A Will is executed to alter the ordinary mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of natural heirs. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. **But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an offspring.**"

88. The same principle was applied by the Supreme Court in *Mahesh Kumar (Dead) by LRs v. Vinod Kumar*, (2012) 4 SCC 387, wherein it was held that making a Will in favour of one son (*the propounder*), to the exclusion of other sons, is not a suspicious circumstance when the propounder had looked after his old aged parents while the other son had never bothered about them. Since the children had neglected the father during his last days, exclusion of other siblings and bequeathing entire estate to only one child will not draw an inference of suspicion or invalidate the will.

89. Likewise, in *Hari Singh v. State*, 2010 SCC OnLine Del 4269, the Delhi High Court held that the mere disinheritance of natural heirs cannot, by itself, constitute a suspicious circumstance. Moreover, Courts are not expected to be satisfied that a bequeathal is rational or not; what has to be considered is whether the bequest was so unnatural that the Testator could not have made it. They have to be mindful of the fact that the Courts have to uphold the wishes expressed and not the wisdom behind the same.

90. More recently, in *Neelam Singh v. Dr Sudha Sinha*, 2022 SCC OnLine Jhar 1231, it was held that the degree of proof and appreciation of evidence is based on preponderance of probability, depending on the evidence on record taken as a whole. *Where there is overwhelming evidence establishing the due execution of*

the Will, the mere exclusion of a natural heir cannot invalidate it.

91. In the present case, the material on record discloses a plausible explanation for the disposition made under the Will. The relevant part of the Will reads as under:

[An exhibit is reproduced here in the original judgment.]

92. PW-1, Sh. Prem Chand, deposed that his brother, Sh. Subhash, had been disowned by the Testator way back in 1996. He further deposed that all the properties were self-acquired by the Testator, who was well within his right to dispose of the same in any manner, to any person, for or without consideration, in the manner prescribed under law. PW-1 also deposed that he had borne all the medical expenses of the deceased and that the Testator had declared the mode of transfer of his properties by executing the Will before the Sub-Registrar. The testimony of PW-1 is fully corroborated by PW-2, Sh. Mahender Kumar, the other brother.

93. It has further emerged from the cross-examination of PW-1 that the Testator had disclosed the reasons to the Sub-Registrar for not bequeathing the properties to the other children. PW-3, Sh. D.K. Sharma, likewise deposed that the Testator had told him that he was not giving the properties to anyone else, *as they were intending to sell the properties.*

94. The evidence, therefore, consistently establishes that the Testator himself furnished cogent reasons for the disposition made under the Will and that the exclusion of the remaining heirs was a conscious and deliberate decision on his part.

95. Much has been argued on behalf of the Appellants that PW-1 had admitted in his cross-examination that the Testator had told him that he should follow the instructions of elder brother, PW -2, Sh. Mahender Kumar, and look after the properties after the deceased, and that he should distribute the properties in equal proportions, as per the instructions of Sh. Mahender Kumar, amongst the brothers.

96. The said admission, however, does not advance the case of the Appellants. The honest statement of PW-1 reflects that there was no manipulation or undue influence exerted upon the Testator, but it was the Testator who intentionally bequeathed all the properties to the Petitioner. The Testator may have desired that the Petitioner, after his demise, must take care of the brothers and also effect an equitable distribution, but that was his wish and not the contents of the bequest, wherein all the movable and immovable properties were bequeathed to the Petitioner.

97. The evidence consistently indicates that the deceased intended to preserve his estate and consciously chose to bequeath the same in favour of Prem Chand. The Appellants have not produced any cogent material to establish that the disposition was the result of coercion, undue influence, or any circumstance

inconsistent with the free volition of the deceased. *Their challenge rests primarily upon the fact of exclusion itself, which, in law, is insufficient to dislodge an otherwise, valid testament.*

98. Consequently, the exclusion of the remaining legal heirs cannot, in the facts and circumstances of the present case, be regarded as an unexplained suspicious circumstance, so as to cast any doubt upon the genuineness or validity of the Will.

(c) Reference to the one Karkardooma property and not the other properties owned by the Testator:

99. The Appellants have further contended that the specific mention of only one land comprised in Khasra No.331 Min., Village Karkardooma, and not the other properties in the Will itself renders the testament doubtful, since the said land had admittedly been acquired by the Delhi Development Authority decades prior to the execution of the Will.

100. *PW-1, Prem Chand*, deposed that this Karkardooma property stood in the name of the deceased, at the time when the Will was executed. He, however, admitted that possession thereof had already been taken over by the Delhi Development Authority pursuant to acquisition proceedings undertaken during the years 1970-71. *PW-1* further denied that the deceased had already received compensation in respect of the acquired land.

101. The fact that one of the properties referred to in the Will had earlier been acquired by the Delhi Development Authority does not, by itself, cast any doubt upon the validity of the testament. Even assuming that the said property did not ultimately form part of the estate available for succession, its inclusion cannot invalidate an otherwise duly proved Will or constitute a suspicious circumstance affecting its genuineness.

102. Besides specifically referring to the land situated in Village Karkardooma, the Will also contained a general bequest in respect of all movable and immovable assets belonging to the Testator, including his bank accounts and properties which might thereafter devolve upon Prem Chand. While the Testator may not have specified the details of the other movable and immovable properties in the Will itself, the details of the same have been furnished by *PW-1* in his testimony as Schedule A, Ex. *PW-1/4*. The Testator's intention to bequeath all his properties was clearly manifest in the Will, the authenticity of which has been established by the Petitioner. *Mere non-mentioning of details of all the properties cannot take away the voluntariness in the execution of the Will.*

103. The issue before a Probate Court is not whether the Testator possessed a valid title to every property mentioned in the Will, *but whether the testament truly represents his last testamentary intention*; the jurisdiction exercised in Probate proceedings is confined to determining the genuineness and due

execution of the Will. The questions relating to title, ownership, acquisition proceedings or the extent of the interest of the deceased in any particular property, lie outside the scope of probate jurisdiction and are required to be adjudicated independently in appropriate proceedings.

104. The jurisdiction of the Probate Court is confined to examining the genuineness and validity of the testament and not disputes relating to title or ownership over the estate. In *Sameer Kapoor v. State*, (2020) 12 SCC 480, the Supreme Court reiterated that probate proceedings are concerned only with the proof of the Will and do not adjudicate proprietary rights in the properties comprised therein.

105. Consequently, neither the inclusion of the acquired Karkardooma property nor the non-specification of the remaining properties in the body of the Will, constitutes a suspicious circumstance warranting rejection of the testament.

(d) Effect of registration of the Will:

106. *The Appellants have also contended that the learned Trial Court attached undue significance to the fact that the Will, was registered.*

107. It is well settled that registration is neither mandatory for the validity of a Will nor sufficient, by itself, to prove its due execution and attestation. Nevertheless, where a Will has otherwise been proved in accordance with law, registration constitutes a relevant corroborative circumstance while appreciating its genuineness.

108. In the present case, the registration of the Will does not stand in isolation. PW-4, Sh. D.S. Rawat, UDC from the office of the Sub-Registrar, Geeta Colony, Delhi, produced the original register and proved from the official record that the Will was registered on 28.12.2005, vide Registration No. 9595, Book No. III, Volume No. 723. The official registration record duly corroborates the evidence of the attesting witnesses. No material has been brought on record to suggest that the registration proceedings were manipulated or that the official record was fabricated.

109. The learned Trial Court itself recorded an observation that no page number was mentioned in the register produced by PW-4 and that although the Will was stated to be registered from pages 74 to 77, the Will actually consisted of two pages. PW-4 explained that the said discrepancy of pagination had occurred, on account of a typing error. The explanation is satisfactory and the minor discrepancy does not affect the authenticity of the official record, particularly when PW-4's testimony was confined to proving the official record, which he duly produced.

110. Thus, the minor discrepancy regarding pagination of the Registration Register, is satisfactorily explained and does not affect the authenticity of the official record.

111. PW-4 further denied the suggestion that the Testator and the witnesses had not appeared before the Sub-Registrar or that the formalities were completed at the window. The Slip No. 41958 dated 28.12.2005 mentioned on the first page of the Will, with a corresponding entry in the relevant register, independently corroborates the fact that the Will was presented and registered on 28.12.2005.

112. Accordingly, although the registration of the Will cannot by itself establish its validity, it furnishes *an additional corroborative circumstance* which, when read together with the evidence proving the due execution and attestation of the testament, lends further assurance to its genuineness.

113. Viewed cumulatively, none of the circumstances relied upon by the Appellants, whether individually or collectively, give rise to any legitimate suspicion regarding the execution or genuineness of the Will. The circumstances relied upon stand either satisfactorily explained from the evidence on record or are legally insufficient to invalidate an otherwise duly proved testament. ***This Court, therefore, concurs with the finding of the learned ADJ that the Appellants have failed to establish the existence of any suspicious circumstance warranting rejection of the Will.***

IV. Whether prior partition was established from the evidence on record?

114. Considerable emphasis has also been laid by the Appellants upon the plea that the deceased had already partitioned his properties amongst his sons during his lifetime and that, consequently, no occasion survived for the execution of the Will.

115. It is no doubt settled that a family arrangement or partition may be oral and in such a case, no compulsory registration is required. In *Kale v. Deputy Director of Consolidation*, (1976) 3 SCC 119, the Supreme Court recognised that a family arrangement may be arrived at orally. However, the party asserting such an arrangement must establish, by cogent evidence, that a definite and concluded partition had in fact taken place and had thereafter been acted upon by the parties.

116. In the present case, the plea of oral partition, remains wholly unsubstantiated. The Appellants have failed to produce any contemporaneous document, family settlement, memorandum, revenue record or any other independent evidence, supporting the alleged partition. Equally, none of the witnesses examined on behalf of the Appellants was able to state with certainty the date, manner or terms of the alleged partition.

117. RW-1, Sh. Jagdish Prasad, deposed that their father, Sh. Nathu Ram @ Nathu Singh, had divided the properties in his lifetime, amongst all the legal heirs and that the possession of the respective parts and portions were given to the respective shareholders as per his own sweet will and choice and this fact had been told by Late Mr. Nathu Ram, to his relatives and friends. In his cross-examination, however, RW-1 was confronted with his Written Statement, wherein

there was no specific plea of oral partition. He further admitted that no written Partition Deed or any other document evidencing such partition had ever been executed.

118. Additionally, *RW-3, Sh. Ram Phool Singh*, in his cross-examination, admitted that no partition ever took place in his presence, but that he was informed by Sh. Nathu Ram that he had partitioned his properties amongst his sons. Likewise, *RW-2, Sh. Pyare Lal*, admitted in his cross-examination that there was no document prepared regarding the partition. He also did not remember the year in which the properties were allegedly partitioned.

119. Thus, what emerges from the testimony and the admissions of the Appellants' own witnesses, is that the brothers were residing in separate portions, to which the Testator may have conceded or had no objection, but merely because they were occupying different portions does not imply that there was any partition, *whether oral or otherwise*, between the parties. There may have been an arrangement where they were all living in the respective portions, but there is not an iota of evidence to establish that any concluded partition had ever taken place. The admissions made by the Objectors themselves, undermine their plea.

120. The plea of prior oral partition, therefore, rests upon vague and inconsistent assertions, unsupported by any cogent evidence.

V. Whether the impugned Judgment suffers from such illegality, perversity

or misappreciation of evidence as would warrant interference by this

Court.

121. In view of the foregoing discussion, *it is held that the Petitioner has succeeded in proving the due execution and attestation of the Will in accordance with Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872.* The deceased Testator was in a sound disposing state of mind at the time of execution of the testament. None of the circumstances relied upon by the Appellants constitutes a suspicious circumstance warranting rejection of the Will and the plea of prior oral partition also remains wholly unsubstantiated.

122. *The findings and the conclusions recorded by the learned ADJ are founded upon proper appreciation of the evidence and are in consonance with the settled principles governing proof of testamentary instruments. No perversity, illegality or material irregularity has been demonstrated so as to warrant interference in appellate jurisdiction. The impugned Judgment, therefore, calls for no interference.*

Conclusion:

123. *In the light of the above discussion, the Judgment dated 15.11.2010 of the learned Additional District Judge, Delhi, granting Probate of Will is hereby, affirmed. **The Appeal, being devoid of merit, is accordingly dismissed.***

124. Pending application(s), if any, also stand disposed of, accordingly.