

# **Smt. Suvidha Devi vs Deputy Director Of Consolidation / ... on 28 February, 2025**

**Author: Jaspreet Singh**

**Bench: Jaspreet Singh**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:12194

Court No. - 8

Case :- WRIT - B No. - 184 of 2025

Petitioner :- Smt. Suvidha Devi

Respondent :- Deputy Director Of Consolidation / Addl. Collector, Finance And Revenue, S

Counsel for Petitioner :- Vimal Kishore Verma, Harsh Verma

Counsel for Respondent :- C.S.C.

Hon'ble Jaspreet Singh, J.

Heard learned counsel for the petitioner. Notice on behalf of respondent nos.1, 2 and 3 has been accepted by the office of Chief Standing counsel.

Under challenge are the orders passed by the three consolidation courts whereby the D.D.C vide its judgment and order dated 27.12.2024 dismissed the revision of the petitioner, as a consequence, the order passed by the S.O.C dated 31.10.2023 was affirmed which in turn upheld the order dated 22.12.2022 passed by the C.O. Submission of learned counsel for the petitioner is that the dispute relates to the property of Sri Lalla, the father of the petitioner.

It is urged that upon commencement of consolidation operations, objections were filed on the premise that the an alleged Will dated 23.09.2000 said to have been executed by Lalla in favour of his four real brothers namely Ram Villas, Pyare Lal and Babu Ram and Chandrika was bad and

could not have been acted upon and in absence of the Will, the petitioner being the sole daughter of deceased Lalla would inherit the property.

Submission of learned counsel for the petitioner is that the said Will was not proved in terms of Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence Act. Further, submission is that in mutation proceedings at the behest of the predecessor in interest of the private respondent, the Will was proved, certified copies of the said statements of the attesting witnesses who were examined in the mutation proceedings were brought on records in the consolidation proceedings. The Consolidation Officer has erred in law by mechanically relying upon the statements in summary proceedings and there was no proof of the Will independent of the statement in the mutation proceedings and for the said reason, the Will cannot be treated to have been proved in accordance with Section 63 of the Indian Succession Act.

It has further been submitted that Riyaz Ahmad who was one of the attesting witnesses of the Will, was examined in the consolidation proceedings, who did not state that the said Will was first signed by Lalla, and, thereafter, it was the other attesting witnesses who had put their signatures/thumb impressions on the said Will. It is also urged that there is recital that the said Will was read out to Sri Lalla specially when he was completely illiterate man and therefore the Will was shrouded in suspicious circumstances, accordingly, in absence of any cogent evidence, the Will could not be treated to be proved merely on the basis of the statement which were recorded in mutation case, as such the orders impugned are bad.

It is urged that this order of C.O was challenged by the petitioner by filing an appeal as well as it was carried further in a revision and the D.D.C also echoed the same sentiments which were expressed by the C.O. Accordingly, the impugned order is bad in the eyes of law. Learned counsel for the petitioner has also relied upon the decision of the Apex Court in Lalitaben Jayantilal Popat vs Pragnaben Jmnadas Kataria and Ors; 2009 (107) RD page 425.

Having considered the aforesaid submissions and from perusal of the material on record, it is undisputed that the Will dated 23.09.2000 is registered. It the case of the petitioner that the said Will was not executed by Sri Lalla, however, the record indicates that the same was put to proof by getting the thumb impressions of Sri Lalla examined by an handwriting expert who submitted his report and concluded that the thumb impressions on the Will dated 23.09.2000 is that of Sri Lalla.

As far as the submission regarding that the Will was not proved in accordance with Section 63 of the Indian Succession Act, if this aspect is seen, it would reveal that Riyaz Ahmad had filed his examination in chief in shape of affidavit, a copy of which has been brought on record as Annexure 5. In paragraph-5, it has categorically been stated by the said attesting witness that the Will was drawn up in presence of attesting witness. It was, thereafter, read out to the testator and it is only, thereafter, that the testator had put his thumb impression which was followed by the signatures/thumb impressions of the said two attesting witnesses namely Riyaz Ahmad and the other attesting witness Sri Hasib Khan.

Considering the aforesaid statement in examination in chief the Court has also examined tentatively the cross examination of Riyaz Ahmad which has been brought on record as part of Annexure 5 and in his examination too he has affirmed the due execution and attestation of the Will. It will further be relevant to mention that it is now well settled that in a Will which is required to be proved in accordance with Section 63 of the Indian Succession Act read with Section 68 of Indian Evidence Act requires at least one of the attesting witnesses to enter into witness box to prove the Will. This compliance has already been made. Apparently, the petitioner who was assailing the said Will ought to have shown certain suspicious circumstances which shrouded the due execution or attestation and having laid such a basis, then the burden to prove and dispel the suspicious circumstances would be on the propounder of the Will (See: H. Venkatachala Iyengar Vs B. N. Thimmajamma & Ors; AIR 1959 SC 443).

It is also relevant to notice that very recently the Apex Court in Chinu Rani Ghosh vs. Shubhash Ghosh; 2024 SCC Online SC 4070 has had the occasion to review the decisions on the execution and attestation of Will wherein it has affirmed the judgment of H. Venkatachala Iyengar (supra) and further has held that a Will is not to be mechanically proved or with mathematical precision. In light of the aforesaid as well as the statements including the cross examination of the attesting witness, it cannot be said that the Will was not proved in accordance with law. As far as the statement of the attesting witnesses recorded in mutation proceedings has not been made the basis of the judgments passed by the Consolidation Authorities though there is reference to the same but that does not partake the nature of sole proof, accordingly, considering the over all circumstances where the Will has been proved in accordance with law and there are concurrent findings by three consolidation courts, this Court in exercise of jurisdiction under Article 226 of the Constitution of India is not tempted to enter into the field of reappraisal of evidence to tinker with findings of fact.

However, before parting it may be noticed that the decision relied upon by the learned counsel for the petitioner in Lalitaben Jayantilal Popat (supra) relied (supra), the proposition which has been laid cannot be disputed but the fact remains that the compliance as required in law has been made and there is nothing which has been pointed out which makes Will suspicious which has been proved in accordance with law, hence, the said decision does not come to the aid of the petitioner.

Accordingly, for the aforesaid reasons, this Court does not find that there is any merit in the petition, which is accordingly, dismissed at the admission stage.

Order Date :- 28.2.2025/Harshita