

Sushma Luthra vs State Ors on 21 February, 2026

DLST010000272009

IN THE COURT OF SH. ARUL VARMA,
DISTRICT JUDGE-02, SOUTH DISTRICT, SAKET COURTS
COMPLEX, NEW DELHI
PC 5862/2016.
Filing No. 434/2009
CNR No. DLST01-0000272009

In the matter of

Smt Sushma Luthra (expired)
W/o Late Sh Jagdish Lal Luthra
R/o 34, Jangpura Extension Market
New Delhi-110014

.....Petitioner

VERSUS

State of NCT, Delhi

Smt Bhawna Arora
W/o Sh Vivek Arora
R/o 42-B Regal Shipra Sun City
Indira Puram, Ghaziabad, UP (transposed as petitioner no 2 on
20.02.2026)

Smt Pooja Luthra
R/o 35 Kailash Apartments
Patparganj, New Delhi

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Master Pratham Luthra
C/o Smt Pooja Luthra
R/o 35 Kailash Apartments
Patparganj, New Delhi

Date of Institution	: 12.01.2009
Date of reserving the judgment	: 20.02.2026
Date of Pronouncement	: 21.02.2026
Decision	: Petition Allowed

JUDGMENT/ORDER

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I. BRIEF FACTS/CASE OF THE PETITIONER

1. The facts as asseverated by the Petitioner are hereby succinctly recapitulated:

(a) It was asserted by the petitioner that Sh Jagdish Lal Luthra, husband of petitioner Smt Sushma Luthra r/o Flat no 34 Jungpura Extension Market, New Delhi, died at New Delhi on 25.05.2008 at his residence, leaving behind his wife (petitioner herein) and daughter Mrs Bhawna Arora w/o Sh Vivek Arora, (respondent no 2 herein), and Ms Pooja Luthra Kapoor, (respondent no 3 herein) the wife of pre-deceased son of petitioner and her deceased husband Mr Sonal Luthra, who expired on 29.11.2005.

(b) It was alleged that the deceased at the time of his death had a fixed place of abode at Flat no 34 Jungpura Extension Maket, New Delhi 110014, situated within the territorial jurisdiction of this Court. It was also contended that the deceased was living in the said place along with his wife only and that the respondent no 3 who is the daughter-in-law of the deceased is living separately along with her child, namely Master Pratham Luthra/respondent no 4

(c) It was brought to the fore that after the death of the deceased son namely Late Sh

Sonal Luthra, the respondent no 3 along with her minor son/respondent no 4 left the PC5862/2016 Page. 3 of 27 Sushma Luthra Vs State & Ors Arul by Arul Varma Varma 2026.02.21 17:26:41 +0530 matrimonial house and started living separately. It was also alleged that the deceased Sh Jagdish Lal Luthra during his life time executed a WILL dated 09.01.2008 in favour of petitioner duly registered in the office of Registrar vide registration no 107 in additional Book no 3 Vol no 1601 on pages 122 to 126 on 09.01.2008 and that by way of the said WILL dated 09.01.2008, the petitioner exclusively inherited properties including the immovable properties bearing Shop no 34 and flat no 34 Jungpura extension, New Delhi-14.

(d) It was further alleged that the WILL dated 09.01.2008 of the deceased was his last WILL and testament and was duly executed by him while he was in good and sound health and that the WILL was signed by the deceased in the presence of two witnesses whose name and signatures appear at the foot of the WILL.

(e) It was contended that by virtue of the said WILL, the deceased Late Sh Jagdish Lal Luthra appointed the petitioner as the sole beneficiary of the said WILL and inter alia bequeathed the immovable property bearing Shop and Flat no 34 Jungpura Extension Market, New Delhi-14 in favour of Ms Sushma Luthra.

(f) It was brought to the fore that shop no 34 Jangpura Extension Market, Near Eros Cinema, New Delhi-14 (allotted by rehabilitation after partition vide allotment PC5862/2016 Page. 4 of 27 Sushma Luthra Vs State & Ors Digitally signed by Arul Arul Varma Date:

Varma 2026.02.21 17:26:44 +0530 order no HRO/JNP/EXT/SH-34/3187/F1 issued by the office of House and Rent Officer, Delhi, vide lease Agreement Patta Dated 30.11.1962 with the President of India (Government) duly registered as No 2105 in addl Book no 1, Volume No 951 on page 66 to 70 on 25.03.1963 which was thereafter transferred to Municipal Corporation of Delhi, Land and Estate Office Delhi in the name of Smt Satbhawan.

(g) It was contended that the said shop was bequeathed by Smt Satbhawan to Late Sh Jagdish Lal Luthra through WILL dated 29.12.1981. It was further alleged that Sh Jagdish Lal Luthra expired during the pendency of the mutation of the said property.

(h) It was stated that the flat appurtenant Shop no 34, Jungpura Extension Market, Near Eros Cinema, New Delhi-14 (mutation /freehold stands in the name of Sh Jagdish Lal Luthra vide Registration no 17161 as Book no 1, Volume no 5562 on pages 170 to 172 on 11.11.2005.

(i) Hence, the petitioner filed the present petition for grant of probate of the said WILL before this Court.

II. OBJECTIONS OF RESPONDENT NO 3 AND 4

2. In the objections filed on behalf of the respondents no 3 and 4 contended that the petitioner is not entitled to the relief of probate as the alleged WILL of executant Mr Jagdish Lal PC5862/2016 Page. 5 of 27 Sushma Luthra Vs State & Ors Digitally signed by Arul Arul Varma Date:

Varma 2026.02.21 17:26:47 +0530 Luthra is false, forged and fabricated document. It was contended that the WILL is neither authentic nor a complete document. In short, the document purported to be alleged WILL has neither been presented in original, nor is it the complete document. It was also alleged that the petition ought to be dismissed as the alleged WILL was not executed with free will and was vitiated by importunity, lack of sound and free disposing mind and also by the fact that the executant did not have full knowledge of the contents of the WILL. It was further submitted that the present petition ought to be dismissed as the document was not properly attested as provided for in law related to WILL.

III. WRITTEN SUBMISSIONS ON BEHALF OF MS BHAWNA ARORA, LR OF PETITIONER

3. During the course of trial, written submissions were filed on behalf of Ms Bhawna Arora, LR of deceased petitioner Smt Sushma Arora, wherein she contended that her claim is not limited to her status as legal heir. She asserted an independent and superior right as the sole and absolute beneficiary under the registered WILL dated 16.03.2009 executed by Smt Sushma Luthra whereby the entire movable and immovable estate of the deceased petitioner stands bequeathed to the applicant Ms Bhawna Arora. She further contended that any adjudication regarding validity of the said WILL directly PC5862/2016 Page. 6 of 27 Sushma Luthra Vs State & Ors by Arul Arul Varma Arul Date:

Varma 2026.02.21 17:26:52 +0530 impact the rights claimed by Ms Bhawna Arora. She contended that her interest is therefore direct, substantial and legally protectable, and clearly adverse to that of the contesting respondents.

IV. ISSUES FRAMED

4. Vide order dated 30.01.2010 following issues were framed:-

"1. Whether WILL of deceased has been validly executed in favour of petitioner.

2. Relief."

5. During the proceedings, the petitioner expired. An application u/o I rule 10 CPC for transposing of petitioner was filed by respondent no 2 Ms Bhawna Arora on 23.11.2022 which was allowed by this Court on 20.02.2026.

V. EVIDENCE LED BY PETITIONER

6. In the proceeding only four witnesses were examined by petitioner succinct testimonies whereof are as follows:

7. PW-1 Sh Vivek Arora He was the attesting witness to the WILL dated 09.01.2008 of the deceased Late Sh Jagdish Lal Luthra. He tendered his evidence by way of affidavit as PW1/A. He relied upon certain documents viz., Copy of WILL dated 09.01.2008 of deceased Late Sh Jagdish Lal Luthra as Ex PW1/1. He deposed that the WILL bears the signature of deceased Late Sh Jagdish Lal Luthra. He was cross examined by Ld Counsel for respondent no 3 and 4.

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8. PW-2 Sh Deepak Luthra: He was another/2nd attesting witness to the WILL dated 09.01.2008 of the deceased Late Sh Jagdish Lal Luthra. He tendered his evidence by way of affidavit as PW2/A. He relied upon certain documents viz., Copy of WILL dated 09.01.2008 of deceased Late Sh Jagdish Lal Luthra already Ex PW1/1. He deposed that the WILL bears the signature of deceased Late Sh Jagdish Lal Luthra. He was cross examined by Ld Counsel for respondent no 3 and 4.

9. PW-3 Smt Sushma Luthra: She tendered her evidence by way of affidavit as PW3/A. She relied upon certain documents viz., the original death certificate of Jagdish Lal Luthra as Ex PW3/1. She was cross examined by Ld Counsel for respondent no 3 and 4.

10.PW-4 Sh Dheeraj Kumar, Record Keeper, Office of Sub-

Registrar -V Mehrauli: He was the summoned witness. He had brought the summoned record of the WILL dated 09.01.2008 vide registration no 107, in additional Book no 3, Volume no 1601, pages 122 to 126. The Will already Ex PW1/1, is same as the one contained in the register brought by him. He deposed that the WILL contained in the register does not contain any annexures. He also deposed that he could not comment anything regarding the contents of the WILL. He was cross-examined by Ld Counsel for respondent no 3 and 4.

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VI. EVIDENCE LED BY RESPONDENTS NO 3 AND 4

11. In the proceeding only two witnesses were examined by defendant, succinct testimonies whereof are as follows:

12. R3W1: Ms Pooja Kapoor: She tendered her evidence by way of affidavit as Ex. R3W1/A. She relied upon photocopies of the medical records of the testator Sh Jagdish Lal Luthra as Mark D3/X. She was cross examined by Ld Counsel for petitioner.

13. R3W2 Sh Sachin Kapoor: He tendered his evidence by way of affidavit as Ex. R3W2. He was also cross-examined by the Ld Counsel for petitioner.

VII. ARGUMENTS OF COUNSEL FOR THE PETITIONER

14. Ld Counsel for petitioner submitted that he has restricted his relief of grant of Letters of Administration qua life insurance policies and deposits and investments as mentioned at para (B) and para (C) of the WILL. Ld Counsel has specifically stated that the LR of petitioner does not wish to seek Letters of Administration qua both the immovable properties under the heading A: 'Immovable property' as mentioned in the WILL dated 09.01.2008 inasmuch as the above two immovable properties have been sold pursuant to a family settlement in CS DJ 9964/2016. Further, LR of the petitioner, Ms Bhawna Arora, who appeared through VC had also concurred with her counsel's submissions.

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15. As far as the objection qua execution of WILL under suspicious circumstances, inasmuch as the testator executed the WILL whilst being admitted in hospital, Ld Counsel submitted that the testator was admitted in hospital only for hip surgery. It was submitted that the testator was conscious and in a sound disposing state of mind. It was further submitted that the testator had executed the WILL voluntarily. It was also contended that the witness from the Sub-Registrar Office i.e. Mr Dhiraj Kumar PW-4 had come to the hospital for the purposes of registration of the WILL in the hospital itself. Thus, Ld Counsel submitted that the above chain of events establish that the WILL was executed by the testator on his own volition and the same was duly registered as per law, and the genuineness of the WILL stands proved and therefore the LOA ought to be granted to the petitioner through her LRs.

16. Ld Counsel submitted that merely because the names of respondent no 3 and respondent no 4 do not find mention in the impugned WILL, as beneficiaries, that alone would not give rise to suspicion qua the execution of WILL. In this context, Ld Counsel invited the Court's attention to evidence by way of affidavit of PW-3 Smt Sushma Luthra, Ex PW3/A to contend that she had averred in her

evidence that upon demise of Sonal Luthra on 29.11.2005, his wife Ms Pooja Luthra/respondent no 3 along with her son Mr Pratham PC5862/2016 Page. 10 of 27 Sushma Luthra Vs State & Ors Arul Date:

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Luthra/respondent no 4 left her matrimonial home on 31.12.2005 and started living separately. Further, no questions have been put to petitioners' witnesses in this regard, by the respondents, to dispute this fact. Ld Counsel thus contended that the facts averred, which are not specifically denied, ought to be deemed to be admitted. Thus, Ld Counsel submitted that the Letters of Administration be granted in favour of Ms Bhawna Arora, who has been transposed as the petitioner, and who is also the LR of deceased petitioner.

VIII. ISSUE WISE ANALYSIS & FINDINGS THERETO i. Issue no 1: Whether WILL of deceased has been validly executed in favour of petitioner. ?

17. Before discussing the matter on merits, it would be relevant to discuss the law relating to the execution and proof of Wills under the Indian Succession Act and the Evidence Act. The expression "Will" is defined by Section 2(h) of Indian Succession Act, 1925 to mean the legal declaration of "the intention" of a testator with respect to his property "which he desires to be carried into effect after his death". Section 59 of Indian Succession Act, 1925 governs the capability of a person to make a Will. It reads as under:

"59. Person capable of making Wills --- Every person of sound mind not being a minor may dispose of his property by Will.

"Explanation1.-A married woman may dispose by Will PC5862/2016 Page. 11 of 27
Sushma Luthra Vs State & Ors Digitally signed by Arul Varma Arul Date:

Varma 2026.02.21 17:27:09 +0530 of any property which she could alienate by her own act during her life.

"Explanation 2.--- Persons who are deaf or dumb or blind are not thereby incapacitated for making a Will if they are able to know what they do by it.

"Explanation 3.--- A person who is ordinarily insane may make a Will during interval in which he is of sound mind.

"Explanation 4.--- No person can make a Will while he, is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing."

18. Section 59 thus declares that every person (not being a minor) "of sound mind" may dispose of his property by Will. The second explanation appended to the said provision clarifies that persons

who are "deaf or dumb or blind" are not incapacitated by such condition for making a Will "if they are able to know what they do by it". The third explanation makes the basic principle clear by adding that even a person who is "ordinarily insane" may make a Will during the interval in which "he is of sound mind". The fourth explanation renders it even more lucid by putting it negatively in words to the effect that if the person "does not know what he is doing" for any reason (such as intoxication, illness or any other such cause) he is incompetent to make a Will. The focal pre-requisite, thus, is that at the time of expressing his desire vis- a-vis the disposition of the estate after his demise he must know and understand its purport or import.

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19. The execution of an unprivileged Will, as the case at hand relates to, is governed by Section 63 of the Indian Succession Act, 1925, which reads as under:

"63 Execution of unprivileged Wills. --Every testator, not being a soldier employed in an expedition or engaged in actual warfare 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 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."

20. As per the mandate of clause (c), a Will is required to be attested by two or more witnesses each of whom should have seen the testator sign or put his mark on the Will or should have seen some other person sign the Will in his presence and by the direction of the testator or should have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person. The Will must be signed by the witness in the presence of the testator, but it

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Date: 2026.02.21 Varma 17:27:16 +0530 is not necessary that more than one witness should be present at the same time. No particular form of attestation is necessary. Thus, there is no prescription in the statute that the testator must necessarily sign the Will in the presence of the attesting witnesses only or that the attesting witnesses must put their signatures on the Will simultaneously, that is, at the same time, in the presence of each other and the testator. In *H. Venkatachala Iyengar v. B.N. ThimmaJamma and Others*: AIR 1959 SC 443 Hon'ble Supreme Court of India has held that a Will is produced before the court after the testator who has departed from the world, cannot say that the Will is his own or it is not the same. This factum introduces an element of solemnity to the decision on the question where the Will propounded is proved as the last Will or testament of the departed testator. Therefore, the propounder to succeed and prove the Will is required to prove by satisfactory evidence that (i) the Will was signed by the testator; (ii) the testator at the time was in a sound and disposing state of mind; (iii) the testator understood the nature and effect of the dispositions; and (iv) that the testator had put his signature on the document of his own free will. It further held that ordinarily, when the evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of mind of the testator and his signature as required by law, courts would be justified in making a finding PC5862/2016 Page. 14 of 27 Sushma Luthra Vs State & Ors Digitally signed by Arul Arul Varma Date:

Varma 2026.02.21 17:27:19 +0530 in favour of the propounder. Such evidence would discharge the onus on the propounder to prove the essential facts. The Hon'ble Supreme Court further held that it is necessary to remove suspicious circumstances surrounding the execution of the Will.

21. Hon'ble Supreme Court of India in *Meena Pradhan vs. Kamla Pradhan* in Civil appeal no. 3351/2014 on 21.09.2023 has held as under:

"9. A Will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the testator. Since the testator/testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the Will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation.

10. Relying on *H. Venkatachala Iyengar v. B.N. ThimmaJamma*, 1959 Supp (1) SCR 426 (3 Judge Bench), *Bhagwan Kaur v. Kartar Kaur*, (1994) 5 SCC 135 (3 Judge Bench), *Janki Narayan Bhoir v. Narayan Namdeo Kadamb*, (2003) 2 SCC 91 (2 Judge Bench) *Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh*, (2009) 4 SCC 780 (3 Judge Bench) and *Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277 (3 Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the Will:

i. The court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him; ii. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

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iii. A Will is required to fulfill all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have 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 such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

iv. For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

v. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator; vi. If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with; vii. Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

viii. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier. ix. The test of judicial conscience has been evolved for dealing with PC5862/2016 Page. 16 of 27 Sushma Luthra Vs State & Ors
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those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;

x. One who alleges fraud, fabrication, undue influence etcetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind' 1. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc.

11. In short, apart from statutory compliance, broadly it has to be proved that (a) the testator signed the Will out of his own free Will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not executed under any suspicious circumstances."

22. It is the duty of the propounder of the Will to prove the legality and validity of the Will. In order to prove the Will dated 09.01.2008, the petitioner examined total four witnesses. Petitioner/ Smt Sushma Luthra examined herself as PC5862/2016 Page. 17 of 27 Sushma Luthra Vs State & Ors Digitally signed by Arul Varma Arul Date:

PW3. She examined Sh Vivek Arora as PW1 being one of the attesting witnesses of the Will of Late Sh Jagdish Lal Luthra. During his evidence, the original Will of Late Sh Jagdish Lal Luthra. was exhibited as Ex.PW-1/1. She also examined Sh. Deepak Kumar as PW2 being one of the attesting witnesses of the Will of Late Sh Jagdish Lal Luthra.

23. Petitioner had also examined the Record Keeper from the office of Sub-Registrar-V, Mehrauli namely Sh Dheeraj Kumar as PW-5, who brought on record the WILL dated 09.01.2008, Ex PW1/1, which was duly registered vide registration no 107, in additional Book no. 3, Volume no. 1601, pages 122 to 126.

24. Further, PW-1 proved the signature of the testator on Will dated 09.01.2008 Ex. PW-1/1. His testimony also shows that the testator was in good physical health and sound disposing state of mind at the time of execution of the Will dated 09.01.2008 Ex. PW-1/1.

25. PW-2 also proved the signatures of the testator on Will dated 09.01.2008 Ex. PW-1/1. His testimony also shows that the testator was in good physical health and sound disposing state of mind at the time of execution of the Will dated 09.01.2008 Ex. PW-1/1. As held by Hon'ble Supreme Court of India in Shashi Kumar Banerjee & Ors vs Subodh Kumar Banerjee Since deceased through LRs, AIR 1964 SC 529, the mode of proving a Will does not differ from that of proving any other PC5862/2016 Page. 18 of 27 Sushma Luthra Vs State & Ors Arul by Arul Varma Date:

Varma 2026.02.21 17:27:34 +0530 document except as to the special requirement of attestation prescribed in a case of a Will under Section 63 of the Indian Succession Act. The role of the Court in the present petition is to examine whether the instrument propounded as the last Will of the testator is the last Will or not of the testator and whether the same has been executed with free sound disposing mind.

IX. OBJECTIONS

26. The respondents had objected to the execution of WILL by citing suspicious circumstances during the execution of WILL. The objections are basically two fold:

1. The testator did not execute the WILL voluntarily, and that the executor was not of sound disposing mind.
2. The grandson i.e. respondent no 4 Pratham Luthra, despite being a natural legal heir, was left out from the bequest.

27. As far as the first objection is concerned, the execution of the WILL was proved by two attesting witnesses namely PW-1 Vivek Aora and PW-2 Deepak Luthra. The said witnesses categorically affirmed that they were attesting witnesses to the WILL 09.01.2008 of the deceased Late Sh Jagdish Lal Luthra. Both the witnesses deposed, during their cross-

examination that the signatures were attested by them as witnesses at Moolchand Hospital. They clarified that the PC5862/2016 Page. 19 of 27 Sushma Luthra Vs State & Ors Arul by Arul Varma Varma 2026.02.21 17:27:38 +0530 testator was in the hospital in connection with a surgical operation of his hip joint. They both denied the suggestion that at the time of preparation of the WILL, the testator was suffering from NV Glaucoma, which rendered him almost blind. In this regard, PW-2 categorically deposed that the testator was able to read paper by keeping the same in front of his eye at a close distance.

28. PW-1 also averred in his cross-examination that the testator did not suffer from any other major ailment, apart from suffering from diabetes. Thus, the cross-examination of both the attesting

witnesses did not impeach their credit and the respondents could not establish that the deceased testator was not in a sound disposing mind. In this context, it would be apt to reproduce the relevant extracts of Ashok Baury Vs State Test Cas 11/2018, wherein it was held as thus:

"8. Soundness of mind, for the purposes of contracting, is defined in Section 12 of the Indian Contract Act, 1872 and which in my view would have application in the matter of soundness of mind requisite for making of a Will as well. As per the said provision, (i) a person is said to be of sound mind, if, at the time of making of the contract, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests; (ii) a person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind; and, (iii) a person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

9. As would be obvious from the above, a common thread is found to run between Section 12 of the PC5862/2016 Page. 20 of 27 Digitally Sushma Luthra Vs State & Ors signed by Arul Arul Varma Date:

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Contract Act and Section 59 of the Indian Succession Act.

10. Chapter VII titled "Of the Burden of Proof", of Part III titled "Production and Effect of Evidence", of the Evidence Act deals with the issue with which this Court is concerned herewith. Per Section 101 thereunder, whosoever desires any Court to give judgment as to any legal right or liability dependant on the existence of facts, which he asserts, must prove that those facts exist. Since the propounder of a Will as per Section 59 of the Indian Succession Act is required to prove that the testator at the time of making of the Will was of sound mind, the burden of proof would be on the propounder. However that would be so where none is opposing the Will propounded and the Will has to be proved for the satisfaction of the Court. However when a document propounded as Will is contested, what would be required to be proved is only that what is in issue and only if the party disputing the document propounded as a Will disputes/controverts that the testator/testatrix, at the time of making the Will was of sound mind, would soundness of mind be in issue and required to be proved. However if soundness of mind is not specifically denied then as per the Rules aforesaid contained in Order VIII Rule 5 of the CPC, soundness of mind shall be deemed to have been admitted. In the event of denial of the soundness of mind, the question as herein arises, on whom should the onus be, whether on the propounder or on the opposite party, arises.

11. Section 114 under the aforesaid Chapter VII of Part III of the Evidence Act enables the Court to presume existence of any fact which it thinks likely to have happened,

regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the case.

12. The common course of natural events and human conduct is of soundness of mind and unsoundness of mind an aberration. If a testator/testatrix has led a normal life, performed day to day functions in the normal course of human conduct, the presumption PC5862/2016 Page. 21 of 27 Sushma Luthra Vs State & Ors Arul by Arul Varma Date:

Varma 2026.02.21 17:27:44 +0530 under Section 114 would be of soundness rather than unsoundness of mind."

29. The above makes it explicit that the presumption u/s 114 of the Indian Evidence Act would be of soundness rather than unsoundness of mind. Further, while proof of soundness of mind requires bare statement to be made, proof of unsoundness of mind has to be established. In this regard, in Ashok Baury (supra), it was held as thus:

"15..... The applicant/Relation No.10 Arun Sood cannot be permitted to, taking advantage of having the onus of the issue as to the soundness of mind placed on the petitioner, steal a walkover by ultimately arguing that the petitioner has failed to prove soundness of mind. As observed in the order dated 25 th November, 2019 also, proof of soundness of mind requires a bare statement to be made. On the contrary to prove unsoundness of mind, one would be required to prove consistent conduct to prove unsoundness of mind, even if medical records of unsoundness of mind are not available."

30. As can be seen above, the respondents were not able to establish unsoundness of mind of the testator. No medical documents, affecting the mental capacity of the testator have been proved by the respondents.

31. It was alleged that the testator was not able to read newspaper or any other written material because of his failed vision. However, this could not be proven by the respondents, rather the attesting witnesses debunked this claim. PW-1 Vivek PC5862/2016 Page. 22 of 27 Sushma Luthra Vs State & Ors by Arul Varma Arul Date:

Varma 2026.02.21 17:27:48 +0530 Arora and PW-2 Deepak Luthra further denied the suggestion that WILL was never read out to the testator.

32. In fact, the visit by the official from the office of Sub-

Registrar in the hospital, for the purposes of registration of WILL lends credence to the case of petitioner. PW-4 Dheeraj Kumar had brought the summon record of the WILL dated 09.01.2008 and proved its registration vide Registration no 107, in additional Book no 3, Volume no. 1601, pages 122- 126 and averred that the WILL Ex PW1/1 is the same as the one contained in the Register

brought by him. In this context, it would be apt to reproduce the following extracts of Rabindra Nath Mukherjee & Anr Vs Panchanan Banerjee (Dead) BY Lrs & Ors (1995) 4 SCC 459, wherein it was held as thus:

"6. Insofar as the third circumstance is concerned, we may first observe that witnesses in such documents verify whether the same had been executed voluntarily by the person concerned knowing its contents. In cases where a will is registered and the Sub-Registrar certifies that the same had been read over to the executor who, on doing so, admitted the contents, the fact that the witnesses to the document are interested loses significance. The documents at hand were registered and it is on record that the Sub- Registrar had explained the contents to the old lady. So, we do not find the third circumstance as suspicious on the facts of the present case."

33. As far as second objection is concerned qua leaving respondent no 4 Pratham Luthra out of bequest, it is trite law that idea behind of execution of WILL is to interfere with PC5862/2016 Page. 23 of 27 Sushma Luthra Vs State & Ors Digitally signed by Arul Arul Varma Date:

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normal law of succession and sometimes natural heirs would be debarred in such cases. In this context, it would be apposite to reproduce the relevant extracts of Rabindra Nath Mukherjee (supra) wherein it was held as thus:

3. A perusal of the two impugned judgments shows that the following were regarded as suspicious circumstances:

(1) Deprivation of the natural heirs by the testatrix.

(2) Identification of the testatrix before the Sub-registrar by an Advocate of Calcutta who had acted as a lawyer of one of the executors in some cases.

(3) The witnesses to the documents were interest in the appellants.

(4) Active part played by one Subodh, a close relation of Rabindra, one of the executors, in getting execution of the will. He has been described as ubiquitous.

4. As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred and in others only partially. As in the present case, the two executors are sons of a half-blood brother of Saroj Bala, whereas the objectors descendants of a full blood sister, the disinheritance of latter could not have been taken as a suspicious circumstance, when some of her descendants are even beneficiaries under the will.

34. Further, it has already come on record that as per the testimony of PW-3 Smt Sushma Luthra, upon demise of Sh Sonal Luthra, on 29.11.2005, respondent no 3 Pooja Luthra and respondent no 4 Pratham Luthra had left her matrimonial hom on 31.12.2005 and started living separately. The testator PC5862/2016 Page. 24 of 27 Sushma Luthra Vs State & Ors Digitally signed by Arul Arul Varma Date:

Varma 2026.02.21 17:27:54 +0530 died on 25.05.2008 i.e. about 3 years later. Therefore, a chasm had already been created between the testator and the respondent no 3 Ms Pooja Luthra and respondent no 4 Pratham Luthra, and debarring respondent no 4 Pratham Luthra should not raise eyebrows.

35. The petitioner Smt Sushma Luthra was the beneficiary of the Will dated 09.01.2008. Despite cross-examination of PW-3, the testimonies of the witnesses examined by the petitioner have remained unrebutted. There is no reason to doubt the testimonies of PW-1 to PW-2. Nothing has come on record which can show that the Will was executed under suspicious circumstances or that the Will was not signed in the presence of the attesting witnesses. Further, there is nothing on record to show that the testator was not having free sound disposing mind at the time of execution of the Wills. The petitioner has also proved the death certificate of the testator Late Sh Jagdish Lal Luthra, on record which is Ex. PW-3/1. The Will dated 09.01.2008 as Ex PW1/1 thus stands proved in accordance with law. In view of the same, this Court held that the petitioner has proved to the satisfaction of the Court that the Will dated 09.01.2008 Ex. PW-1/1 of Late Sh Jagdish Lal Luthra is his last and final Will. It also stands proved that the Will dated 09.01.2008 Ex. PW-1/1 of Late Sh. Jagdish Lal Luthra has been duly executed as per law by the testator Sh. Jagdish Lal Luthra in sound mind. The Court's conscience is PC5862/2016 Page. 25 of 27 Sushma Luthra Vs State & Ors Digitally signed by Arul Arul Varma Date:

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also satisfied with testimonies of PW-1, PW-2, PW-3, and PW-4. There are no suspicious circumstances surrounding the execution of the Will dated 09.01.2008 Ex. PW-1/1 which may lead to any contrary inference. The issue no.1 is accordingly decided in favour of the petitioner.

X. RELIEF.

36. Ergo, in view of the above in extenso discussion, the petition is allowed. The petitioner is held entitled to grant of letter of administration in line with the Will dated 09.01.2008 Ex. PW-1/1, executed by Late Sh Jagdish Lal Luthra. Since the petitioner expired during the probate proceedings, respondent no 2 namely Ms Bhawna Arora has been transposed as the petitioner, Letters of Administration be issued to her. The Letters of Administration be issued to the Ms Bhawna Arora to administer the estate left behind by Late Sh Jagdish Lal Luthra as per Schedule-B (except immovable properties under heading A) annexed with the petition, on the prescribed form VII upon furnishing of the proper Court Fee, administration bond and surety bond by the petitioner. The formalities of issuance of letters of administration shall be completed by the

petitioner/beneficiary within six months from the date of the judgment as per Section 290 & 291 of Indian Succession Act.

37. The petitioner, as per Section 317 of the Indian Succession Act, shall furnish full and true inventory of the properties and PC5862/2016 Page. 26 of 27 Sushma Luthra Vs State & Ors Arul by Arul Varma Varma 2026.02.21 17:28:01 +0530 credits mentioned in the Will and exhibit the same in the Court within 6 months from the date of grant of letters of administration in prescribed Form No. 178. The petitioner shall also file true account of the properties and credits within 1 year in prescribed Form No. 179.

38. It is made clear that the granting of letters of administration would not tantamount to any declaration of the title of the deceased to the estate in question. It is further clarified that till the petitioner does not furnish the requisite Court Fee, Administration Bond and Surety Bond and does not obtain the letters of ministration, duly signed and sealed by the Court as required under Section 290 of the Indian Succession Act, this judgment shall not be read as proof of the same.

39. Original Will Ex. PW-1/1 shall remain part of judicial file, in terms of Section 294 of the Indian Succession Act, 1925.

40. File be consigned to record room after necessary compliance.

Pronounced in the open Court Arul by Arul Varma Date:

on this 21st February, 2026 Varma 2026.02.21 17:28:04 +0530 (ARUL VARMA)
DISTRICT JUDGE-02/SOUTH, SAKET COURTS/NEW DELHI PC5862/2016 Page.
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