

Ms. Inder Pal Kaur vs The State Of Nct Of Delhi & Ors. on 27 March, 2025

Author: Dharmesh Sharma

Bench: Dharmesh Sharma

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Judgment reserved on : 25 March 2025
Judgment pronounced on : 27 March 2025

+ FAO 215/2021 and CM APPL. 30970/2021 - STAY, CM APPL. 16580/2024 - FOR DELAY OF 10 DAYS IN FILING W/SUBMISSIONS, CM APPL. 5213/2025 - SEEKING TRANSFER OF PETITION

MS. INDER PAL KAURApp
Through: Mr. Rajat Wadhwa, Mr. Gurpreet Singh, Ms. Anisha Rastogi, Advs. also appellant in person.

versus

THE STATE OF NCT OF DELHI & ORS.Respondents
Through: Ms. Sumati Anand and Mr. Sandesh Kumar, Advs. for R-2 to R-4 alongwith respondents in person.

+ FAO 216/2021 and CM APPL. 30973/2021 - STAY, CM APPL. 16581/2024 - FOR DELAY OF 10 DAYS IN FILING W/SUBMISSIONS, CM APPL. 5214/2025-SEEKING TRANSFER OF PETITION

MS. INDER PAL KAURApp
Through: Mr. Rajat Wadhwa, Mr. Gurpreet Singh, Ms. Anisha Rastogi, Advs. also appellant in person.

versus

STATE OF NCT OF DELHI & ORS.Respondents
Through: Ms. Sumati Anand and Mr. Sandesh Kumar, Advs. for R-2

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to R-4 alongwith respondent person.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

JUDGMENT

DHARMESH SHARMA, J.

1. This common judgment shall decide the aforesaid appeals preferred by the appellant under Order XLIII read with Section 104 of the Code of Civil Procedure, 1908 ["CPC"] and Section 299 of the Indian Succession Act, 1925 ["Act"] assailing the impugned common Judgment dated 28.07.2021 passed by the learned Additional District Judge-02, West District, Tis Hazari Courts, Delhi ["Probate Court"] whereby the Probate Petition vide PC No. 15976/2016 with regard to the second Will propounded by the appellant dated 02.08.2009 purportedly executed by her deceased father, namely Kulbir Singh Dhingra (hereinafter referred as 'deceased-testator') was dismissed and on the other hand the first Will dated 16.03.2005 propounded by her mother in PC No. 15933/2016 was held to be genuine, last and final Will of the deceased-testator.

FACTUAL BACKGROUND

2. Shorn of unnecessary details, the appellant instituted PC No.15976/2016 under Section 278 of the Act on 12.08.2015 claiming that her father i.e. the deceased-testator was the absolute owner of the property bearing No. 9-C, North-West Avenue, Punjabi Bagh, New Delhi-110026 (hereinafter referred as the 'subject property') and during his lifetime he executed a Will dated 02.08.2009 (Ex.PW-1/2), whereby the deceased-testator bequeathed right, title and interest in the subject property in equal shares to the appellant as well as her mother i.e. respondent No.2 and brother i.e. respondent No.3/S. Jaswinder Singh and her sister i.e. respondent No.4/Ms. Jasmeen Kaur.

3. It was claimed that the Will dated 02.08.2009 was attested by PW-2/Mr. Rajbir Singh as well as PW-3/Mr. Dalip Rawat and executed in the presence of all the legal heirs including the respondents at their house. On the other hand, the respondent No.2 i.e. petitioner mother in PC No. 15933/2016 instituted on 02.05.2016 sought Probate/Letters of Administration in respect of the same property i.e. the subject property based on the registered Will dated 16.03.2005 (Ex.RW-2/A) (also PW- 4/A) executed by the deceased-testator, which was claimed to have been attested and executed by her son S. Jaswinder Singh (respondent No.2 before the Probate Court) and her daughter Ms. Inder Pal Kaur (respondent No.4 before the Probate Court and the appellant before this Court who also propounded the second Will dated 02.08.2009). The testator had passed away on 03.02.2010.

4. Both cases were clubbed and the following issues were framed in the petition bearing PC No. 15976/2016 filed by the appellant Ms. Inder Pal Kaur:

"1. Whether the deceased Late Sh. Kulbir Singh S/ o Late Sh. Dhian Singh executed a valid, legal and enforceable Will dated 02.08.2009 as claimed by the petitioner? OPP (2). Whether the petitioner is entitled for Probate/Letter of Administration on the basis of the aforesaid Will, as claimed? OPP (3). Whether the petition is liable to be dismissed for the objections raised by the respondent/ objector no. 2, 3 & 4 in the written statement/objections? OPD (4). Whether the petition is barred by limitation? OPD 2, 3 & 4. (5). Relief."

5. In order to prove her case, the appellant i.e. the petitioner examined herself as PW-1 and at the cost of repetition two other witnesses were PW-2/Mr. Rajbir Singh and PW-3/Dalip Rawat.

6. On the other hand, the respondents examined 5 witnesses. The respondent No.4/Ms. Jasmine Kaur was examined as RW-1; RW-2 was one Mr. Naveen from the office of Sub-Registrar, Pitampura, who produced the copy of the registered Will dated 16.03.2005 (Ex.RW- 2/A) as found in the official record of the Sub-Registrar. RW-4/Ms. Pooja Vanjani from Delhi Heart and Lungs Institute, who produced the medical record of the deceased-testator to the effect that he was admitted to the Hospital on 08.05.2009 and discharged on 09.05.2009. However, she was unable to produce the entire treatment record for the same having been destroyed.

7. RW-5 was Mr. Alic Masih, Junior Medical Officer from Sir Ganga Ram Hospital, who testified that the deceased-testator/Kulbir Singh Dhingra remained in the Hospital from 24.01.2010 to 03.02.2010 as per the medical documents Ex.RW5/A (colly. 119 pages). He further deposed that the patient remained admitted on various occasions from 03.09.2009 to 11.09.2009, from 14.10.2009 to 16.10.2009, from 03.11.2009 to 28.11.2009 and from 24.01.2010 to 03.02.2010 but the medical records pertaining to the year 2009 was destroyed.

8. Likewise, in another petition filed by Mrs. Ravinder Kaur bearing PC No. 15933/2016, the following issues were framed:

"(1). Whether the Will dated 16.03.2005 executed by Late Sh.

Kulbir Singh S/o Late Sh. Dhian Singh is his last genuine, legal, valid Will and duly executed in his sound disposing mind? OPP (2). Whether the petitioner is entitled for Probate/Letter of Administration on the basis of the aforesaid Will, as claimed? OPP (3). Whether the petition is liable to be dismissed for the objections raised by the respondent/ objector no.4 in the written statement/objection? OPR (4). Relief."

9. In order to prove their case, the petitioner/Mrs. Ravinder Kaur examined herself as PW-1; PW-5 was Mr. Jaswinder Singh/respondent No.2; PW-2 was Ms. Pooja Vanjani from Delhi Heart and Lungs Institute; PW-3 was Alic Masih, Junior Medical Officer; and PW-4 was Sunil Kumar from the office of Sub-Registrar, Pitampura, who produced the copy of the Will Ex.PW-4/A executed by Mr. Kulbir Singh Dhingra and registered in the official records.

10. On the other hand, respondent No.4 i.e. the appellant before this Court deposed as RW-1.

IMPUGNED JUDGMENT:

11. Suffice to state that learned Probate Court dismissed the petition bearing PC No. 15976/2016 filed by the appellant Ms. Inder Pal Kaur holding that although PW-2/Mr. Rajbir Singh and PW-3/Mr. Dalip Rawat deposed without any blemish that the second Will had been signed in their presence by the deceased-testator, however, considering that the petitioner/appellant was an attesting witness to the first registered Will dated 16.03.2005, a doubt arose about the validity and genuineness of the second Will dated 02.08.2009 as the signatures of her brother S. Jaswinder Singh as well as mother Mrs. Ravinder Kaur were not taken on the second Will so as to prove by way of preponderance of probabilities that the first registered Will dated 16.03.2005 had been revoked. As a necessary corollary, the second petition bearing PC No. 15933/2016 instituted by Mrs. Ravinder Kaur, the mother of the parties, was decided in her favour holding that the same was the genuine, last and final Will of the deceased-testator. LEGAL SUBMISSIONS:

12. Learned counsel for the appellant invited the attention of this Court to the testimony of PW-2/Mr. Rajbir Singh and PW-3/Mr. Dalip Rawat and it was urged that both the witnesses cogently proved the attestation and execution of the second Will dated 02.08.2009 by the deceased-testator at the residence of the respondents, who were present all the time. While, on the other hand, the first Will dated 16.03.2005 has not been validly proved as only respondent No.3/S. Jaswinder Singh was examined, who failed to depose that his deceased father had executed and signed the Will in his presence. It was vehemently urged that the testimony of PW-5/S. Jaswinder Singh was not in accordance with Section 63 of the Indian Evidence Act, 1872 and reliance in this regard was placed on the decisions in *Pentakota Satyanarayana v.*

Pentakota Seetharatnam 1; Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh 2; and Jagdish Chand Sharma v. Narain Singh Saini (Dead) through Legal Representatives 3.

13. Per contra, learned counsel for the respondents urged that there was no necessity to prove the execution of the registered Will dated 16.03.2005 strictly in terms of Section 63 of the Indian Evidence Act read with Section 68 of the Indian Evidence Act, 1872 since the petitioner/appellant Ms. Inder Pal Kaur was an attesting witness to the first Will, who admitted that she appeared before the Sub-Registrar at the time of execution of the Will by her father. It was also pointed out that the second Will dated 02.08.2009 had not specifically revoked the first Will dated 16.03.2005, and lastly, it was submitted that the appellant failed to address the suspicious circumstances with regard to the execution of the alleged second Will dated 02.08.2009 inasmuch as during the relevant time the deceased-testator was suffering from serious mental issues. It was urged that the case laws cited by the learned counsel for the appellant are distinguishable and do not support the case of the appellant.

ANALYSIS AND DECISION

14. I have given my thoughtful consideration to the submissions advanced by learned counsels for the parties at the Bar and I have gone through the documentary evidence on the record of the case including 1 (2005) 8 SCC 67 2 (2009) 4 SCC 780 3 (2015) 8 SCC 615 digitized Trial Court Record as well as the case laws cited at the Bar.

15. At the outset, this Court has no hesitation in holding that the present appeals are bereft of any merits. First things first, on a bare perusal of the recitals in the second Will dated 02.08.2009 (Ex.PW-1/2) propounded by the appellant, it is manifest that it does not specifically revoke or cancel the earlier registered Will dated 16.03.2005. The second Will dated 02.08.2009 (Ex.PW-1/2) generally declares that all previous relevant Wills and testamentary dispositions are revoked and the testator claims to declare that the one being executed shall be the last Will. What emerges on a bare perusal of the second Will dated 02.08.2009 is that the testator has not given any reasons for revoking the earlier Will, in particular the first registered Will dated 16.03.2005.

16. Indeed, the aforesaid aspects are not per-se fatal to the case of the appellant/petitioner, but at the same time considering that both PW- 2/Rajbir Singh and PW-3/Dalip Rawat were not members of the family. Considering their deposition almost in a parrot like manner that the second Will dated 02.08.2009 was executed by the deceased testator in his house i.e. subject property in the presence of all the members of the family including respondent No.2/mother-Smt. Ravinder Kaur. The learned Trial Court has committed no error or perversity in observing that since the appellant/petitioner was admittedly an attesting witness to the first registered Will dated 16.03.2005, the least she could have done to give some credence to the execution of the second Will dated 02.08.2009, was to seek attestation of the Will by her brother, mother, or in the alternative her real sister.

17. What clearly emerges is that the appellant/Inder Pal Kaur not only woefully fails to clear the aforesaid suspicious circumstances, but also fails to give any explanation as to why her father chose to change his Will and instead of making his wife the sole beneficiary, decided to give equal shares to each of his children. Avoiding a long academic discussion on the subject, it would be apposite to refer to the observations of the Supreme Court in the case of Surendra Pal v. Saraswati Arora (Dr.) 4 which read as under:-

"7. The propounder has to show that the Will was signed by the testator; that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But there may be cases in which the execution of the Will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of the relevant circumstances the dispositions appear to be unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the Will are not the result of the testator's free will and mind. In all

such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the Will is accepted. Again in cases where the propounder has himself taken a prominent part in the execution of the Will which confers on him substantial benefit that is itself one of the suspicious circumstances which he must remove by clear and satisfactory evidence. After all, ultimately it is the conscience of the court that has to be satisfied, as such the nature and quality of proof must be commensurate with the need to satisfy that conscience and remove any suspicion which a reasonable man 4 (1974) 2 SCC 600 may, in the relevant circumstances of the case, entertain. (See H. Venkatachala lyengar v. B.N. Thimmajamma [AIR 1959 SC 443 : 1959 Supp (1) SCR 426 : 1959 SCJ 507] and Rani Purnima Devi v. Kumar Khagendra Narayan Dev [AIR 1962 SC 567 : (1962) 3 SCR 195 :

(1962) 1 SCJ 725]) In the latter case this Court, after referring to the principles stated in the former case emphasised that where there are suspicious circumstances the onus will be on the propounder to explain them to the satisfaction of the court before the Will could be accepted as genuine; and where the caveator alleges undue influence, fraud and coercion the onus is on him to prove the same. It has been further pointed out that the suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will which may be unnatural or unfair or improbable when considered in the light of the relevant circumstances. If the caveator does not discharge the burden which rests upon him in establishing the circumstances which show that the Will had been obtained by fraud or undue influence, a probate of the Will must necessarily be granted if it is established that the testator had full testamentary capacity and had in fact executed it validly with a free will and mind. The observations of the Privy Council in Motibai Hormusjee Kanga v. Jamsetjee Hormusjee Kanga [AIR 1924 PC 28 :

80 IC 777 : 26 BLR 579] support the above proposition. Mr Ammer Ali observed at p. 33:

"It is quite clear that the onus of establishing capacity lay on the petitioner. It is also clear that if the caveator impugned the Will on the ground that it was obtained by the exercise of undue influence, excessive persuasion or moral coercion, it lay upon him to establish that case."

In the light of what has been stated if the various requirements of a valid Will are established, then as observed by the Privy Council in Motibai Hormusjee Kanga's case at p. 33:

"A man may act foolishly and even heartlessly; if he acts with full comprehension of what he is doing the Court will not interfere with the exercise of his volition." {Bold portions emphasized}

18. Additionally, it may be stated that if the deceased testator really intended to bequeath the right, title and interest in the subject property in equal shares to his wife and his children, he could have very conveniently called upon each one of them to sign, attest and execute a Will instead of seeking assistance of strangers like PW-2/Rajbir Singh and PW-3/Dalip Rawat, who were not even distant family members but merely casual acquaintances.

19. Before drawing the curtains finally down on the present case, it is pertinent to mention that the learned Trial Court also had an occasion to observe the issue with regard to the soundness of mind and capability of the deceased testator at the time of execution of the second Will dated 02.08.2009, which goes as under:-

25. Next objection is regarding mental fitness of the testator to execute the will. On this issue, RW5 Mr. Alic Masih deposed that S. Kulbir Singh remained admitted in Sir Ganga Ram Hospital from

03.09.2009 to 11.09.2009, from 14.10.2009 to 16.10.2009, from 03.11.2009 to 28.11.2009 and lastly from 24.01.2010 to 03.02.2020. This witness placed on record the medical documents only for the last admission as Ex.RW5/A. For documents related to the admission in 2009, he deposed that the same had been weeded by the hospital vide order Ex.RW5/C. Perusal of death summary dated 03.02.2010 Ex.RW5/A shows that the deceased was suffering from left hemiplegia, old posterior circulation stroke, hypertension and altered sensorium. So, he was suffering from paralysis of left side organs. The admission and discharge summary Ex.RW5/B shows that whenever he was admitted in the hospital, he was admitted in Neurology Unit. It suggests that the testator was suffering from brain problem. CT report dated 03.04.2009 proves that S. Kulbir Singh had developed cerebral atrophy with basilar artery Ectasia. MRI brain report dated 25.05.2009 shows that there were chronic ischemic changes in his bilateral periventricular. Moreover, it is mentioned in CT report dated 03.04.2009 that S. Kulbir Singh had history of sudden onset of giddiness and vomiting with past history of transient ischemic attack two years back. All these reports prove that the testator was suffering from brain problem. He had developed cerebral atrophy which is loss of brain cells. This loss results in shrinkage of brain and ultimately, there is decline in cognitive ability. As per CT report dated 03.04.2009, he was suffering from that problem for last two years. The impugned will is said to have been executed on 02.08.2009. The medical reports and other documents show that on that day, he was suffering from cerebral atrophy which had reduced his mental ability. Hence, it is held that he was not in a fit state of mind on the day of execution of the will.

20. The aforesaid reasons spelled out by the learned Probate Court have been challenged in the instant appeal and cannot be interfered with either. Anyhow, the findings recorded by the learned Probate Court that the execution of the Will dated 02.08.2009 by the deceased testator is shrouded under suspicious circumstances and the same appears to be not a genuine, last and final Will of the testator cannot be interfered with. Having said that, the execution of the first registered Will in PC No. 15933/2016 instituted by the mother has not only been proven by respondent No.3/S. Jaswinder Singh, but also the appellant, who was admittedly the signatory and attesting witness to the same. It was categorically deposed by PW-5/S. Jaswinder Singh that he had signed the Will at

Point 'C' and his father/testator Sardar Kulbir Singh signed at Points 'E' and 'F', which was the Will dated 16.03.2005 and marked as Ex.PW4/A. He also deposed that the same was bearing the signature of the second attesting witness, namely Inder Pal Kaur at Point 'D'.

21. Insofar as the case laws cited by learned counsel for the appellant, the decision in Pentakota Satyanarayana (supra), was one wherein it was held that initially the onus is on the propounder to prove execution of the Will and thereafter it shifts to the party alleging undue influence or coercion in the execution of the Will to establish its case. It was held that mere fact that the beneficiary under the Will had actively participated in the execution thereof or their natural heirs were debarred thereby, or that the testator had a draft Will with him while going to the scribe or that he was at that time accompanied by a number of persons or that one of the beneficiaries was present at the time of registration, were held not to make out a case of suspicious circumstances, undue, influence, or coercion or fraud.

22. The above cited case is good for the exposition of law by the Supreme Court explaining the meaning of the term 'execution' as appearing under Section 68 of the Indian Evidence Act, 1872, to mean in terms of Section 63 of the Indian Evidence Act, 1872 that "the attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument or has seen some other persons sign the instrument in the presence and by the direction of the executant. The witness should further state that each of the attesting witnesses signed the instrument in the presence of the executant. These are the ingredients of attestation and they have to be proved by the witnesses. The word "execution" in Section 68 includes attestation as required by law."

23. The case of Jagdish Chand Sharma (supra) was one whereby it was inter-alia held that if the bequest is ex-facie, unnatural, unfair and improbable, the propounder has to clear the attendant negativity and credibly show the testator's, cognizant, free, objective and discerning state of mind at the time of execution of the Will. I fail to see as to how the said case law helps the case of the appellant. The decision in Yumnam Ongbi Tampha Ibema Devi (supra) was one wherein the Supreme Court reiterated the principles of law governing the applicability of Section 63 of the Indian Evidence Act, 1872. The cited case law are distinguishable and supply no legal support to the instant appeals.

24. In view of the foregoing discussion, this Court is unable to find any illegality, perversity or incorrect approach adopted by the learned Probate Court in passing the impugned judgment dated 28.07.2021. Hence, the present appeals are dismissed.

25. The pending applications also stand disposed of accordingly.

DHARMESH SHARMA, J.

MARCH 27, 2025 Sadiq/sp