

RSA-5268-2018 (O&M)

2025:PHHC:139203



RSA-5269-2018 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**Date of decision : 23.09.2025**

**RSA-5268-2018 (O&M)**

**1**

Vineet Kumar Sharma & ors. .... Appellants

Versus

Pardeep Kumar Sharma & ors. .... Respondents

**2**

**RSA-5269-2018 (O&M)**

Vineet Kumar Sharma & ors. .... Appellants

Versus

Smt. Anju Sharma @ Seema & ors. .... Respondents

**CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN**

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Present :- Mr. Sachin Mittal, Advocate  
Mr. Arnav Mittal, Advocate and  
Mr. Akshat Mittal, Advocate  
for the appellants (both cases).

Ms. Riya Thomas, Advocate and  
Mr. Abhimanyu, Advocate for  
respondent No.1- RSA-5268-2018

Mr. Rajesh Jangra, Advocate  
for respondent No.2- RSA-5268-2018  
for respondent No.1- RSA-5269-2018

None for respondent No.2- RSA-5269-2018

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Service upon respondent No.3-dispensed  
with vide order dated 21.05.2019 in  
RSA-5268-2018 and RSA-5269-2018

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**PANKAJ JAIN, J. (ORAL)**

1 By way of this common judgment, I intend to dispose off the afore-captioned two regular second appeals. Defendants No.1, 8, 2, 3, 4 & 6 are in second appeal.

2 Civil Suit No.16558 of 2013 titled as *Pardeep Kumar Sharma Vs. Shri Vineet Sharma & ors.* was filed by respondent No.1-Pardeep Kumar Sharma seeking decree of possession by way of partition. Civil Suit No.21619 of 2014 titled as *Smt. Anju Sharma @ Seema Vs. Pardeep Kumar Sharma & ors.* was filed by daughter of late Ram Parkash Sharma seeking decree of declaration to the effect that the WILL propounded by the present appellants claiming to be the WILL executed by late Ram Parkash Sharma is illegal, null and void and that the plaintiffs are co-owner and co-sharer in joint possession to the extent of 1/5<sup>th</sup> share in the suit property. The said two suits were ordered to be consolidated vide order dated 18.10.2016.

3 Parties to the *lis* are sons, daughters, and daughters-in-law of late Ram Parkash Sharma, who died on 17.02.2011. Late Ram Parkash Sharma had five children, i.e, three sons and two daughters. One of his sons, namely Suneet Kumar Sharma and one of the daughters, namely Pratibha Rishi, predeceased him. Accordingly, he left behind Vineet Kumar Sharma,

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appellant No.1, Pardeep Kumar Sharma-respondent No.1 in **RSA-5268-2018** and Anju Sharma @ Seema-respondent No.2 in **RSA-5268-2018**. Appellants claimed that Ram Parkash Sharma executed WILL dated 20.05.2008, whereby he bequeathed ground floor of the suit property in favor of his daughter-in-law, namely Purnima Sharma, wife of Vineet Sharma, and First floor of the suit property in favor of the other daughter-in-law, namely Sushma Sharma, widow of late Suneet Kumar Sharma, the predeceased son. The daughters, namely Anju Sharma @ Seema and late Pratibha Rishi, and the third son, Pradeep Kumar Sharma, were excluded.

4 The issue in the *lis* relates to legality and validity of unregistered WILL propounded by the present appellants. The excluded son and daughter are disputing the WILL, claiming that the same is result of fraud played by the daughters-in-law upon deceased Ram Parkash Sharma. It is being claimed that the deceased was in old age and was suffering from diseases. He was hard of hearing and was unable to see properly. The WILL in question has been obtained exercising coercion, and the same is surrounded by suspicious circumstances.

5 Trial Court decreed the suit filed by the plaintiffs disbelieving the WILL. Trial Court held that the appellants have failed to prove due execution of WILL dated 20.05.2008 and the same cannot be believed. Trial Court enlisted the following reasons for disbelieving the WILL :-

*“24- In the present case, after considering the evidences available on record, this court is of the considered opinion that the defendants*



*no. 2 and 8 in the main suit have failed to prove the due execution of will dated 20-05-2008 allegedly executed by late Ram Parkash Sharma. Following are the reasons behind my conclusions:-*

*24.1- Original will has been presented as Ex-DW3/1. Perusal of this will reveals that it was allegedly executed in presence of two witnesses Rajeev Verma and D.D. Sharma. This will consists of five pages in which the testator had put his signature on 10 times i.e. two signatures on each page. Although, one attesting witness namely Rajeev Verma has been examined in this case as DW3 but his testimony is not inspiring confidence of this court. There are various reasons to doubt the testimony of this witness.*

*- First of all, the defendants no. 2 and 8 have not appeared into the witness box to support their case. Their case is contested by Vineet (defendant no. 1 in the main suit) who is husband of defendant no. 8 Purnima. None appearance of both beneficiary of the will is going against them and adverse inference is drawn against them in accordance with illustration (g) of section 114 of the Indian Evidence Act which provides that **"an evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."***

*Similar arguments has also been advanced by the ld. counsel for defendants No.1 to 4 and 6 to 8 regarding non-appearance of plaintiff Pardeep Sharma in the witness box. However, this Court is of the view that his non-appearance has been justified by producing documents regarding his illness. Hence, non-appearance of plaintiff Pardeep Sharma is not fatal for his case.*

*- Moreover, will dated 20-05-2008 was not executed in presence of any close relative which is also a suspicious circumstance in this case. Apart from this, will was not disclosed to any relative of the testator and this is also a suspicious circumstance in the execution of the will. Use of three different pens at the last page of the Will which*



*is also admitted by DW-3 Rajeev Verma also indicate that the Will is shrouded with suspicious circumstances.*

- *Most glaring suspicion in the execution of the will is that the beneficiary have not produced any evidence comparing the admitted signature of the testator with the signatures appended on the alleged will. On the other hand, admitted signatures of deceased/testator Ram Parkash Sharma is available on conveyance deed Ex-D1 and no expertise is required to identity the difference in admitted signatures on Ex-D1 and alleged signatures on will Ex-DW3/1. The difference in these admitted and alleged signatures are clearly visible and it appears that signatures on alleged will are forged one. This type of comparison is allowed by section 73 of the Indian Evidence Act. It appears that due to apparent difference between these admitted and alleged signatures, the beneficiaries have not appeared before the court for their evidence nor they examined these signatures by any hand writing and finger printing expert.*

- *It is also pertinent to mention here that before filing of the main case, the defendants no. 2 and 8 also filed a probabte petition in which they also started adducing evidence but it is admitted fact that notice of that probate petition was not given to defendant no. 5 namely Anju. It is also pertinent to mention here that in that probabte petition, defendant no. 5 Anju Sharma was impleaded as respondent no. 4. Ex-DX is certified copy of reply filed by the respondents no. 2 to 6 in the probabte petition in which there is no signature of Anju but the reply has been described as reply by respondents no. 2 to 6. When notice of the probate petition was not given to Anju then filing of admitted reply by Anju (Defendant no. 5) cannot be believed rather it indicates that beneficiaries of the will tried to get relief from the court by filing admitted reply by respondents but this appears to be fraudulent act because in the absence of signature of Anju, the admitted reply cannot be regarded as reply by Anju.*

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- *Although registration of will is not compulsory but in this case keeping in view the particular facts and circumstances of the case, non registration of will is also suspicious circumstance.*

*Hence, there are several suspicious circumstances shrouded in the execution of the will and these suspicious circumstances have not been dispelled by the beneficiaries.*

*In case titled as **Gurdial Kaur and others vs Kartar Kaur and others (1998 (3) LJR 154 SC)** it has been held that it is well settled that if there is suspicious circumstance about the execution of the will, it is the duty of the person seeking declaration about the validity of the will to dispel such circumstances. The court even held that the registration of the will is not a ground to dispel such circumstance. In the present case, the alleged will dated 24-12-1971 is not even registered one and it is executed by an illiterate lady.*

*It is also held in Gurdial Singh case (supra) that "the obligation is cast upon the propounder of the will to dispel the suspicious circumstances. The conscience of the court must be satisfied that will in question was not only executed and attested in the manner required under the Indian Succession Act 1925, it should be found that the will was the product of the free choice of the executant who had voluntarily executed the same after knowing and understanding the contents of the will."*

*In **Kartar Singh & Anr versus Dilber Singh (dead) through LRs 2009 (4) LJR 638** in which it has been held that with the deposition of the attesting witnesses and the scribe the proof of a will does not end. Propounder of a will is required to dispel the suspicious circumstances that may surround its execution.*

*24.2- I have perused the judgments cited by the ld. Counsel for defendants. However, due to the reasons as stated above, the will Ex-DW3/1 cannot be accepted by the court. Hence, these judgments are not applicable in the present case.*

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*24.3- Due to the aforesaid reasons, the conscience of the court is not satisfied qua due execution of the will and therefore, I hold that the beneficiaries defendants no. 2 and 8 have failed to prove the due execution of the will. Therefore, the suit property owned by Ram Parkash Sharma shall be devolved amongst all his legal heirs by the law of inheritance. All his sons and daughters being class I legal heirs are entitled to inherit the suit property in equal share. Therefore, the plaintiff is entitled to 1/5 share in the suit property.”*

6 Dissatisfied defendants preferred appeal. The Appellate Court affirmed the findings recorded by the Court of the First Instance observing that the propounders failed to prove due execution of the WILL. It is doubtful that a testator who was aged 71 years and was living in Gurugram would have travelled sufficient distance to Kamla Nagar, Delhi to execute WILL even though he could have well executed the same in Gurugram itself. Testator had no reason why he should exclude his sons and daughters from the property and instead execute WILL in favor of his two daughters-in-law. Even though Ram Parkash Sharma was living with his youngest son Vineet Kumar Sharma and family of the deceased son Suneet Kumar Sharma, however, he executed WILL in favor of his daughters-in-law namely Purnima Sharma wife of Vineet Sharma and Sushma Sharma widow of Late Suneet Kumar Sharma in equal shares. Earlier, a probate petition was filed which was dismissed as withdrawn. The Lower Appellate Court further affirmed the findings recorded by the Trial Court that signatures on WILL seem to be doubtful when

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compared with the signatures of late Ram Parkash Sharma on other documents available on the judicial file. The Lower Appellate Court further held that beneficiaries failed to appear in the witness box to dispel the suspicious circumstances surrounding the WILL.

7 Counsel for the appellants has assailed the findings recorded by the Courts below to contend that the Courts below erred in disbelieving the WILL, which stands fully proved on record as per Section 68 of the Indian Evidence Act, 1872. He submits that Rajeev Verma, one of the attesting witnesses of the WILL, duly proved execution of WILL as per Section 63 of Indian Succession Act, 1925. The Courts erred in comparing the signatures on the WILL with the signatures of the executant on conveyance deed, which was executed more than three decades back. The Courts below ignored the fact that plaintiff, Pardeep Kumar Sharma, did not step into the witness box. Rather, his wife, Varsha Sharma, appeared as his special power of attorney. Thus, adverse inference, if at all, was to be drawn, the same had to be drawn against Pardeep Kumar Sharma-plaintiff and not against the defendants/appellants. He submits that the fact of withdrawal of probate petition has been viewed with inverted lens by the Courts below. The fact is that during the course of pendency of probate petition, present two suits were filed. The regular suits having been filed before the Civil Court the probate petition was rightly withdrawn. He submits that the fact of execution of WILL by late Ram Parkash Sharma was duly revealed by P.C.Verma in front of



relatives including the plaintiffs after the prayer meeting of the executant. None of them raised any dispute. He submits that the Courts below erred in law in non-suiting the appellants holding the WILL propounded by them to be invalid.

8 *Per contra*, counsel for the respondents have submitted written arguments pleading the following grounds to support judgments of the Courts below :-

*1. First of all, the Appellant no.2 and 3, propounders of the alleged will, have not appeared into the witness box to support their case. Their case is contested by Vineet (Appellant no.1) who is husband of Appellant no.2 Purnima. Non-appearance of both beneficiary of the will is going against them and adverse inference is drawn against them in accordance with illustration (g) of section 114 of the Indian Evidence Act which provides that "an evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."*

*2. Moreover, will dated 20-05-2008 was not executed in presence of any close relative which is also a suspicious circumstance in this case. Apart from this, will was not disclosed to any relative of the testator and this is also a suspicious circumstance in the execution of the will. Use of three different pens at the last page of the Will which is also admitted by DW-3 Rajeev Verma also indicate that the Will is shrouded with suspicious circumstances.*

*3. Most glaring suspicion in the execution of the will is that the beneficiary have not produced any evidence comparing the admitted signature of the testator with the signatures appended on the alleged will. On the other hand, admitted signatures of deceased/testator Ram*

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*Parkash Sharma is available on conveyance deed Ex-DI and no expertise is required to identify the difference in admitted signatures on Ex-DI and alleged signatures on will Ex-DW3/1. The difference in these admitted and alleged signatures are clearly visible and it appears that signatures on alleged will are forged one. This type of comparison is allowed by section 73 of the Indian Evidence Act. It appears that due to apparent difference between these admitted and alleged signatures, the beneficiaries have not appeared before the court for their evidence nor they examined these signatures by any hand writing and finger printing expert.*

*4. It is also pertinent to mention here that before filing of the main case, the Appellant No.2 and 3 also filed a probate petition in which they also started adducing evidence but it is admitted fact that notice of that probate petition was not given to Respondent No.1, Anju. It is also pertinent to mention here that in that probate petition, Respondent No.1 Anju Sharma was impleaded as respondent no. 4. Ex-DX is certified copy of reply filed by the respondents no. 2 to 6 in the probate petition in which there is no signature of Anju but the reply has been described as reply by respondents no. 2 to 6. When notice of the probate petition was not given to Anju then filing of admitted reply by Anju (Respondent No. 1) cannot be believed rather it indicates that beneficiaries of the will tried to get relief from the court by filing admitted reply by respondents but this appears to be fraudulent act because in the absence of signature of Anju, the admitted reply cannot be regarded as reply by Anju.*

*5. Although registration of will is not compulsory but in this case keeping in view the particular facts and circumstances of the case, non registration of will is also suspicious circumstance.*



6. *The will is Ex.DW3/A. This will allegedly says that Pradeep Kumar Sharma, Vineet Kumar Sharma, Smt. Anju Sharma, Sunit Kumar Sharma and Pratibha Rishi were sons and daughter of the testator Shri Ram Prakash Sharma. One son i.e. Suneet Kumar Sharma and one Daughter Smt. Pratibha Rishi already died. Two sons and one daughter are still alive and filed the suit for partition. The alleged will Ex.DW3/A is computer typed and allegedly signed by testator twicely on each page. The witnesses are Rajiv Verma, Advocate and D.D.Sharma. Shri Rajiv Verma, Advocate has been examined to prove the will as an attesting witness who is resident of E-153, Kamla Nagar, Delhi-7. At the time of execution of will in May 2008 the testator was living at house no. 1383, Sector-4, Gurgaon having age of 71 years and the attesting witness Shri Rajiv Verma, Advocate stated that testator had come to his father at Kamla Nagar Delhi, to get the will signed by him as an attesting witness. In his examination, he stated that Shri Ram Prakash Sharma, already drafted will Ex.DW3/A before coming to him and he also stated that Shri D. D. Sharma, also signed in his presence. But it is not explained how D. D. Sharma reached to the house of father of attesting witness Shri Rajiv Verma Advocate at Kamla Nagar Delhi-7 because as per verification of one attesting witness i.e. Rajiv Verma, the address of D. D. Sharma has been mentioned as R/o 18, Shivam Apartment, Sector-15, Rohini Delhi. The attesting witness Rajiv Verma, Advocate has not stated that D.D. Sharma accompanied the testator or he called him or Sh.D.D. Sharma was already present in his house. How Sh. D.D. Sharma came to sign the will has not been explained and it seems that Sh.D.D. Sharma had not signed the will at that time. Thus, it is highly doubtful circumstance because the testator aged about 71 years was living in Gurgaon and he had travelled a sufficient distance to Kamla Nagar, Delhi despite the fact that he could execute the will in Gurgaon itself. Nor it has come in evidence that the testator had already fixed a day for execution of the will at the office of father of said attesting witness.*



*7. The testator was more than 71 years at that time and there were no reasons why he would debar his sons and daughter from the property and instead the will was executed in the name of his two daughter-in-law. This circumstance is highly doubtful. No doubt that testator could give the property to anyone but something should be record or mentioned in the will to debar his real sons and daughters. The contents of the will are that Pradeep Kumar Sharma has been living separately in Ashok Vihar, Gurgaon since 1996 in his own property and his youngest son Vineet Kumar Sharma and family of his deceased son Suneet Kumar Sharma are living with him but why the will has been executed in favour of daughter in law namely Smt Purnima Sharma and Smt. Sushma Sharma in equal share has not been explained because it has not been mentioned in the entire will that said beneficiaries at any point of time served the deceased which could make out special circumstance to debar his sons and daughters.*

*8. The trial Court passed a reasoned judgment and dealt the issue of Will in details. The trial Court has rightly discussed the evidence and material. The will dated 20.05.2008 was executed at Delhi while travelling a distance by the testator despite the fact that he was living in Gurgaon. The use of three different pen at the last page of the Will further creating doubt. Even every page has been twicely signed by the testator but no other person has signed the said page. If the testator was so sensitive, signed twicely then why signature of witnesses were not taken on every page. The attesting witness DW3 Rajiv Verma in his cross-examination stated that there is no law that every page has to be signed by the attesting witness but the law says that signature of the testator must be in the presence of attesting witnesses. So each page had to be signed by the attesting witnesses if the testator signed each page twicely. This is a suspicious circumstances moreover debarring his own sons and daughters*

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*without any reasons further creating serious doubt because no circumstance has been mentioned in the will which could suggest that the testator was having special reason to execute the will in favour of his two daughter-in-law only.*

*9. The suspicious circumstance in the execution of will has to be removed by the beneficiaries but the beneficiaries neither appeared in witness box nor have produced any evidence which could suggest that signatures of the testator are genuine and are not forged one because a specific allegation has been raised in the written-statement that signatures are forged and fabricated and does not belong to late Shri Ram Prakash Sharma. The signatures of the testator are available on conveyance Deed Ex.D1 but the same are clearly visible by bare eyes suggesting that signatures are different flow which are creating serious doubt regarding signatures on the Will of late Sh. Ram Prakash Sharma.”*

9 I have heard learned counsel for the parties and have carefully gone through records of the case.

10 Parties to the suit are fighting for estate left by Ram Parkash Sharma. Appellants have propounded WILL dated 20.05.2008, executed by Ram Parkash Sharma. The respondents are disputing the WILL.

11 As per settled law, regular second appeals before this Court are to be dealt in accordance with Section 41 of the Punjab Courts Act, 1918, and not as per Section 100 CPC, 1908. Reference can be made to ratio of law laid down by five Judges bench in ***Pankajakshi (Dead) Through LRs v. Chandrika (2016) 6 SCC 157***. Trite it is, construction of a document of title, or a document which is foundation of the rights of parties, necessarily raises



a question of law. Reference can be made to ratio of law laid down in *Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd.*, AIR 1962 SC 1314.

12 In the present *lis*, validity of WILL is in issue.

13 Propounder of the WILL is not only required to prove execution thereof in terms of Section 63 of the Indian Succession Act, 1925 but is also required to dispel suspicious circumstances, if any, demonstrated by the caveator. Supreme Court in *Kavita Kanwar vs. Mrs. Pamela Mehta & Ors.* (2021) 11 SCC 209 considered the entire series of precedents on the issue of WILL to observe as under :-

*“ 24.8. We need not multiply the references to all and other decisions cited at the Bar, which essentially proceed on the aforesaid principles while applying the same in the given set of facts and circumstances. Suffice would be to point out that in a recent decision in Civil Appeal No. 6076 of 2009: Shivakumar & Ors. v. Sharanabasppa & Ors., decided on 24.04.2020, this Court, after traversing through the relevant decisions, has summarised the principles governing the adjudicatory process concerning proof of a Will as follows:—*

*“12.1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.*

*12.2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.*



*12.3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.*

*12.4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.*

*12.5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.*

*12.6. A circumstance is “suspicious” when it is not normal or is ‘not normally expected in a normal situation or is not expected of a normal person’. As put by this Court, the suspicious features must be ‘real, germane and valid’ and not merely the ‘fantasy of the doubting mind.’*

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*12.7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.*

*12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?*

*12.9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.”*

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14 In the present case, the propounders of the WILL, in order to prove execution thereof in terms of Section 63 of the Indian Succession Act, 1925 (for short 'the 1925 Act') examined Rajeev Verma, one of the attesting witnesses to the WILL as DW3. In his examination-in-chief, he fully proved WILL Ex.DW3/A. He testified that Ram Parkash Sharma brought a drafted WILL Ex.DW3/A to him. The executant Ram Parkash Sharma signed upon WILL Ex.DW3/A in his presence after understanding the contents thereof. He also signed as an attesting witness and thereafter the other witness D.D.Sharma signed the same after perusing the WILL. He was cross-examined at length. He testified that Ram Parkash Sharma was suffering from prostate enlargement. He testified that Ram Parkash Sharma came to coaching institute of his father alone from Gurugram. Thus the propounders of the WILL proved execution thereof in terms of Section 63(c) of the 1925 Act as per Section 68 of the Evidence Act, 1872. Not even a suggestion was put to him that Ram Parkash Sharma did not sign the WILL.

15 The defendants claimed that the WILL was result of fraud and coercion. Counsel for the respondents do not dispute that apart from oral testimony no evidence was led by the respondents to prove the defence. There is no evidence that Ram Parkash Sharma was suffering from any ailment that rendered him incapacitated mentally or physically.

16 The Courts below have spelled out certain suspicious circumstance. The Court held that the testimony of Rajeev Verma does not

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aspire confidence. The reason has not been assigned. The reasons assigned by the Court to disbelieve the WILL is that defendants No.2 and 8, the beneficiaries, have not appeared in the witness box. Vineet Sharma, husband of defendant No.8 appeared. Rather, Pardeep Kumar Sharma, the plaintiff who wanted to dislodge the WILL has not appeared. The other reason assigned by the Court is that the WILL was not executed in presence of any close relative. From the statement made by DW3 Rajeev Verma, it is evident that he was a close family friend who knew the family and attended family functions. The Courts below have totally misconstrued the expression, "*suspicious circumstance.*" As held by Supreme Court in the case of ***Kavita Kanwar's case supra***, a circumstance can be said to be suspicious only when it is not normal or is not normally expected. Trusting a friend rather than a close relative is rather normal and cannot be held to be suspicious. Much stress is being laid down by the Courts below to the exclusion of the sons and daughters by Ram Parkash Sharma. A WILL, by its very nature, is a departure from natural succession. If unequal distribution is to be held to be suspicious circumstance to dislodge the WILL, no WILL can survive judicial scrutiny. In ***Motibai Harmusjee v. Jemsetjee Hormusjee, AIR 1924 PC 28***, it was held that:-

"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. "

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17 Relying upon the afore-stated observations made by Privy Council in *Motibai Harmusjee's case (supra)*, Supreme **Court** in *Surendra Pal v. Dr. (Mrs.) Saraswati Arora, (1974) 2 SCC 600* held that:-

*"It is not for us to fathom the motivations of a man. His actions and reactions are unpredictable as they depend upon so many circumstances. There is, however, always some dominant and impelling circumstance which motivates a man's action though in some cases even a trivial and trifling cause impels him to act in a particular way which a majority of others may not do. At times psychological factors and the frame of mind in which he is, may determine his action."*

18 Evidently the propounder has assigned reasons for excluding his son and daughters, explaining all the events of his life and the circumstances. The reasons assigned cannot be held to be abnormal. That apart, the Court has no jurisdiction to go into the reasons of exclusion of a legal heir from the list of beneficiaries under the WILL. The Court is only required to see whether the exclusion is reasoned or not.

19 The other factor that has weighed on the minds of the Courts below is difference in the signatures of executant Ram Parkash Sharma as they appeared on the WILL *vis-a-vis* his signatures on the deed of conveyance Ex.D1. The conveyance deed was executed on 07.04.1978. WILL was executed on 20.05.2008, i.e. after more than 30 years. The respondents did not lead any evidence to prove that the WILL was not signed by Ram Parkash Sharma. Rather, their stand is that the WILL was executed by Ram Parkash

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Sharma under coercion. The Courts have assumed the role of expert invoking Section 73 of the 1872 Act, but no reasons to back the conclusions recorded have been assigned.

20 Execution of Document required by law to be attested needs to be proved by examining at least one of the attesting witnesses. In cases where handwriting of executant is in dispute the same can be proved either :

(1) by the evidence of a handwriting expert (Section 39) or;

(2) by the evidence of a witness acquainted with the handwriting of the person who is said to have written the disputed writing (Section 41); or

(3) opinion formed by the Court itself on comparison made of the disputed writings with the admitted or specimen writings (Section 72).

Courts below in the present case resorted to the third mode Section 73 of the Indian Evidence Act, 1872 re-enacted as Section 72 of BSA 2023. Trite it is that the science of identification of handwriting by comparison being not an infallible one. Before donning the hat of an expert himself under Section 72 of BSA 2023 the court must be fully satisfied about the authorship of the admitted writings which is made the basis for comparison.

21 After considering legislative background of Section 73 Supreme Court of India spelled out scope of Section 73 of the Indian Evidence Act 1872 (for short 'the 1872 Act') in *State (Delhi Admn.) v. Pali Ram, (1979) 2 SCC 158* observing as under :-

*33. Since even where proof of handwriting which is in nature comparison exists, a duty is cast on the court to use its own eyes and mind to compare the admitted writing with the disputed one to verify and reach its own conclusion, it will not be wrong to say that when a*



*court seised of a case, directs an accused person present before it to write down a sample writing, such direction in the ultimate analysis, “is for the purpose of enabling the court to compare” the writing so written with the writing alleged to have been written by such person, within the contemplation of Section 73. That is to say, the words “for the purpose of enabling the court to compare” do not exclude the use of such “admitted” or sample writing for comparison with the alleged writing of the accused, by a handwriting expert cited as a witness by any of the parties. Even where no such expert witness is cited or examined by either party, the court may, if it thinks necessary for the ends of justice, on its own motion, call an expert witness, allow him to compare the sample writing with the alleged writing and thus give his expert assistance to enable the court to compare the two writings and arrive at a proper conclusion.*

*34. For all the foregoing reasons, we are of opinion that in passing the orders dated May 20, 1972 relating to the disposal of the application dated December 11, 1970, the learned Additional District Magistrate did not exceed his powers under Section 73, Evidence Act. The learned Judges of the High Court were not right in holding that in directing the accused by his said order dated May 20, 1972, the Magistrate acted beyond the scope of Section 73 or in a manner which was not legal.*

22            In ***State of Maharashtra v. Sukhdev Singh, (1992) 3 SCC 700***

it was observed that :-

*29. xxxxxxxxxxxxxxxxxxxxxxxx It is indeed true that by nature and habit, over a period of time, each individual develops certain traits which give a distinct character to his writings making it possible to identify the author but it must at the same time be realised that since handwriting experts are generally engaged by one of the contesting parties they, consciously or unconsciously, tend to lean in favour of*

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*an opinion which is helpful to the party engaging him. That is why we come across cases of conflicting opinions given by two handwriting experts engaged by opposite parties. It is, therefore, necessary to exercise extra care and caution in evaluating their opinion before accepting the same. So courts have as a rule of prudence refused to place implicit faith on the opinion evidence of a handwriting expert. Normally courts have considered it dangerous to base a conviction solely on the testimony of a handwriting expert because such evidence is not regarded as conclusive. Since such opinion evidence cannot take the place of substantive evidence, courts have, as a rule of prudence, looked for corroboration before acting on such evidence. True it is, there is no rule of law that the evidence of a handwriting expert cannot be acted upon unless substantially corroborated but courts have been slow in placing implicit reliance on such opinion evidence, without more, because of the imperfect nature of the science of identification of handwriting and its accepted fallibility. There is no absolute rule of law or even of prudence which has ripened into a rule of law that in no case can the court base its findings solely on the opinion of a handwriting expert but the imperfect and frail nature of the science of identification of the author by comparison of his admitted handwriting with the disputed ones has placed a heavy responsibility on the courts to exercise extra care and caution before acting on such opinion. Before a court can place reliance on the opinion of an expert, it must be shown that he has not betrayed any bias and the reasons on which he has based his opinion are convincing and satisfactory. It is for this reason that the courts are wary to act solely on the evidence of a handwriting expert; that, however, does not mean that even if there exist numerous striking peculiarities and mannerisms which stand out to identify the writer, the court will not act on the expert's evidence. In the end it all depends on the character of the evidence of the expert and the facts and circumstances of each case.*



30. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

*What emerges from the case-law referred to above is that a handwriting expert is a competent witness whose opinion evidence is recognised as relevant under the provisions of the Evidence Act and has not been equated to the class of evidence of an accomplice. It would, therefore, not be fair to approach the opinion evidence with suspicion but the correct approach would be to weigh the reasons on which it is based. The quality of his opinion would depend on the soundness of the reasons on which it is founded. But the court cannot afford to overlook the fact that the science of identification of handwriting is an imperfect and frail one as compared to the science of identification of fingerprints; courts have, therefore, been wary in placing implicit reliance on such opinion evidence and have looked for corroboration but that is not to say that it is a rule of prudence of general application regardless of the circumstances of the case and the quality of expert evidence. No hard and fast rule can be laid down in this behalf but the court has to decide in each case on its own merits what weight it should attach to the opinion of the expert.*

23            While dealing with the situation of denial of signatures by the alleged executant Supreme Court in ***K.S. Satyanarayana v. V.R. Narayana Rao***, (1999) 6 SCC 104 observed that :-

*“7. A piquant situation had developed before the trial court when the 1st defendant denied his signatures on the written statement and the vakalatnama in favour of his counsel. The trial court should have immediately probed into the matter. It should have recorded the statement of the counsel for the 1st defendant to find out if the vakalatnama in his favour and the written statement were not signed by the 1st defendant whom he represented. It was apparent that the 1st defendant was trying to get out of the situation when confronted with his signatures on the vakalatnama and the written statement and*



*his having earlier denied his signatures on Exh. P-1 and Exh. P-2 in order to defeat the claim of the plaintiff. Falsehood of the claim of the 1st defendant was writ large on the face of it. The trial court could have also compared the signatures of the 1st defendant as provided in Section 73 of the Indian Evidence Act.*

24 In ***O. Bharathan v. K. Sudhakaran***, (1996) 2 SCC 704 Supreme Court red flagged the practice of courts acting as experts de hors Section 73 of the 1872 Act observing that :-

*18. The learned Judge in our view was not right either in brushing aside the principles laid down by this Court in Pali Ram [(1979) 2 SCC 158 : 1979 SCC (Cri) 389 : AIR 1979 SC 14] on the ground that it was not a criminal case or taking upon himself the hazardous task of adjudicating upon the genuineness and authenticity of the signatures in question even without the assistance of a skilled and trained person whose services could have been easily availed of. Annulling the verdict of popular will is as much a serious matter of grave concern to the society as enforcement of laws pertaining to criminal offences, if not more. Though it is the province of the expert to act as judge or jury after a scientific comparison of the disputed signatures with admitted signatures, the caution administered by this Court is to the course to be adopted in such situations could not have been ignored unmindful of the serious repercussions arising out of the decision to be ultimately rendered. To quote, it has been held in Pali Ram [(1979) 2 SCC 158 : 1979 SCC (Cri) 389 : AIR 1979 SC 14] : (SCC p. 168, para 30)*

*“The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of*



*prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.*”

*19. The necessity for adhering to the said sound advice and guidance is all the more necessary in a case where hundreds of signatures are disputed and the striking dissimilarities noticed by the court at the time of trial of the election petition.*

25 Same sentiment finds echo in ***Ajay Kumar Parmar v. State of Rajasthan (2012) 12 SCC 406*** where while dealing with the provisions of Section 73 of the 1872 Act, Supreme Court observed that courts should be slow to base their findings solely on comparison made by it observing that :-

*“28. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the court may also not be conclusive. Therefore, when the court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the court must keep in mind the risk involved, as the opinion formed by the court may not be*



*conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision.*

26 Similar view has been expressed in ***A. Srinivasulu v. State of T.N., (2023) 13 SCC 705 :-***

*137. For invoking Section 73, there must first have been some signature or writing admitted or proved to the satisfaction of the court, to have been written or made by that person. The Section empowers the court also to direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures.*

27 Thus the following legal proposition emerges from the afore discussed views expressed in binding precedents:

A. In cases where handwriting is disputed the same can be proved either :

(1) By the evidence of a handwriting expert (Section 39 of BSA 2023) or;

(2) By the evidence of a witness acquainted with the handwriting of the person who is said to have written the disputed writing (Section 41 of BSA 2023); or

(3) Opinion formed by the Court itself on comparison made of the disputed writings with the admitted or specimen writings (Section 72 of BSA 2023).



B. The science of identification of handwriting by comparison is not an infallible one;

C. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be just brushed aside as useless. The court while analysing the opinion of expert may apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision

D. There is no legal bar preventing the court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing;

E. The court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it ;

F. For the purpose of comparison of handwriting by court or by expert, existence of admitted handwriting is sine qua non.

G. The opinion formed by the court is also susceptible to error and is not conclusive. It is also to be considered only as a corroborative piece of cogent evidence and not relied upon;

H. The court cannot simply conclude that it has seen the signatures and finds it to be or doesn't find the same to be that of executant. Once Court decides to adorn the hat of expert, the opinion expressed by court has to be backed by reasons. It cannot be merely conclusions without being backed by reasons.

28 In view of above, this Court finds that the propounders of the WILL-the appellants fully proved execution thereof in terms of Section 63(c) of 1925 Act as per Section 68 of the 1872 Act. None of the circumstances enlisted by the Courts below to dislodge the WILL qualifies to be a 'suspicious circumstance'. Accordingly, the present appeals are allowed.

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Suits filed by the plaintiffs-respondents are ordered to be dismissed. On the basis of the WILL dated 20.05.2008 executed by Ram Parkash Sharma, appellants No.2 & 3 are held to be owners in possession of the suit property left by Ram Parkash Sharma in equal shares as per the WILL.

29 Pending miscellaneous application, if any, also stands disposed off.

30 A photocopy of this order be placed on the file of the connected case.

**( PANKAJ JAIN )  
JUDGE**

**23.09.2025**

*Pooja Sharma-I*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No