

Evidence Act Section 71 enables the party to produce other evidence to prove the Will if the testator examined is not specific as to the attester signing in the presence of testator and the testator executing the Will in his presence.

*M.B. Ramesh (D) By LRs v. K.M. Veeraje Urs (D) by LRs. and others*, reported in AIR 2013 SC 2088 wherein it is held as under:

*“21. The issue of validity of the Will in the present case will have to be considered in the context of these facts. It is true that in the case at hand, there is no specific statement by PW2 that he had seen the other attesting witness sign the Will in the presence of the testator, but he has stated that the other witness had also signed the document. He has proved his signature, and on the top of it he has also stated in the cross-examination that the other witness (Mr. Mallaraje Urs), Smt. Nagammani, himself and one Sampat Iyanger and the writer of the Will were all present while writing the will on 24.10.1943 which was registered on the very next day. This statement by implication and inference will have to be held as proving the required attestation by the other witness. This statement along with the attendant circumstances placed on record would certainly constitute proving of the will by other evidence as permitted by Section 71 of the Evidence Act.”*