

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.136 of 2012

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1. Suresh Singh
 2. Mahesh Singh
 3. Ganesh Kumar Singh, all sons of late Nand Kumar Singh
 4. Mostt. Raj Kali Devi, wife of late Nand Kumar Singh
 5. Smt. Asha Devi, wife of Amar Nath Singh
 6. Smt. Reeta Devi, wife of Satyendra Singh, all residents of Village Sajawalpur, P.O. Dholi, P.S. Sakra, District Muzaffarpur

.... Appellant/s

Versus

1. Ram Swarath Singh, son of late Hari Nandan Singh
2. Vijay Kumar Singh wrongly claimed as son of late Sarjug Singh
3. Mahadeo Devi
4. Kishori Devi
5. Radhika Devi
6. Deoki Devi alias Kamb Devi
7. Ram Dulari Devi
8. Prem Kanti Devi, 3 to 8 all daughter of late Sarjug Singh, all residents of Village Sajawalpur, P.O. Dholi, P.S. Sakra, District Muzaffarpur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Yogendra Prasad Sinha,
Mr. Arun Kumar, Advocates.

For the Respondent/s : Mr. Yogendra Mishra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-08-2015

Heard learned counsel for the appellants.

2. In this case the appellants are aggrieved by the judgment and decree dated 7.1.2008 and 1.3.2008 passed by Additional District Judge, F.T.C. No.5, Muzaffarpur in L.A. Case No.1 of 1988 by which the court below has refused to grant probate to the appellants. Appellants filed First Appeal No.87 of 2008 and later on the same was converted into miscellaneous appeal and that has been

registered as M.A. No.136 of 2012.

3. From the record it appears that the appellants have come with a case that Saryug Singh executed a will in favour of Nand Kumar Singh (now dead). After 18 years of death of testator the appellants filed a case under Succession Act to grant letter of administration to the appellants for the estate of late Saryug Singh. During the trial the original applicant, namely, Nand Kishore Singh, died and on account of his death, present appellants were substituted as party. It has been claimed that late Saryug Singh has executed a will on 5.9.1990 in favour of original applicant in the sound state of mind without any coercion, fear or undue influence. It has also been stated that the appellants claim to be the sole legatee as well as heirs and successors of testator entitled to the latter of administration.

4. In the probate case Ram Swarath Singh was made a near relative of opposite party no.1 but at later stage Vijoy Kumar Singh, Mahadeo Devi, Kishori Devi, radhika Devi, deoki Devi, Ram Dulari Devi and Prem Kanti Devi claiming to be sons and daughter of late Saryug Singh being class I heir under the Hindu Succession Act 1956 appeared as intervenor. The court below refused to grant



letter of administration to the appellants on the ground that application for probate has been filed after 18 years added with the fact that appellants could not produce attesting witnesses to show the proper execution of the will as well the heirs and successors of Saryug Singh was not impleaded as a party itself creates suspicion on the genuineness of the will. So much so the hand writing experts, namely Srikant Chaudhary (P.W.7) and Syed Ekbal Tayab Hassan Raja O.P.Witness No.18) have submitted their contradictory reports. Srikant Chaudhary found L.T.I. of Saryug Singh in the alleged will whereas Syed Ekbal tayab Hassaon Raja found that LTI appearing in the alleged will does not tally with the admitted LTI of Saryug Singh. The court has also held that the applicant has failed to prove good mental condition of Saryug Singh and rejected the claim of the appellants.

5. Learned counsel for the appellants submits that the court below has committed error in rejecting the application of letter of administration as plaintiff witnesses specifically stated the death of two attesting witnesses and as such compulsory examination of one witness at least does not arise in this case. So much so witness has come



forward to show that it was genuine execution of the will. He has further submitted that other witnesses having been examined to prove to execution of the will by Sarjug Singh in his favour on account of service rendered by him during his life time. So much so Saryug Singh does not having any son and daughter. It was natural that out of love and affection will was executed in his favour.

6. From the impugned judgment it appears that the Sarjug Singh has sons and daughter which is lucidly clear from the statement of witnesses. P.W.2 is scribe; in his deposition he has accepted that Sarjug Singh had told him that he had son and daughters. Two reports of the handwriting experts are incompatible to each other as one report shows LTI of Saryug Singh and second one shows that LTI of Sarjug Singh does not tally with admitted LTI of Sarjug Singh. When the son and daughters are alive it does not stand to reason father will execute the will in favour of stranger excluding his own sons and daughter unless compelling circumstances exist otherwise in the normal state of affairs it does not happen. So much so the claim of the appellants that Saryug Singh has died issueless is belied from the statement of P.W.2 and there the cause

shown by the appellants for execution of will falls flat, so much so son and daughters presented themselves and participated in the proceeding.

7. In this view of the matter, this Court does not find any error in the impugned order. Accordingly this appeal is dismissed.

(Shivaji Pandey, J)

Vinay/-

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