

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.430 of 2013

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1. Mosmat Golwa Devi wife of Bishun Paswan.
 2. Anil Paswan son of Shri Sudhan Paswan.
- Both are residents of Mohalla Kanhauli Ajrakbe P.S. Mithanpura
District Muzaffarpur.

.... Appellant/s

Versus

Nagina Paswan son of Late Ramashish Paswan resident of Mohalla
Kanhauli, Ajrakbe P.O. Kanhauli P.S. Mithanpura District Muzaffarpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Prasad, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 11-09-2015

Heard counsel for the appellants and the respondents.

In the present case, appellant is challenging the order dated 6th April 2013 passed in L.A. Case No. 16 of 1993 whereby and whereunder the court below has granted letters of administration with respect to Will executed by Dhanpati Devi dated 30th June 1988 to Nagina Paswan, the sole respondent.

In the Genealogical Table submitted by Nagina Paswan it has been shown that Thaga Paswan had two sons, Nirsu Paswan and Gondhara Paswan @ Ghonu Paswan. Ghonu Paswan had one son Ramashish Paswan and Ramashish Paswan has one son, namely, Nagina Paswan who is the sole respondent in this case. Nirsu Paswan had two sons, Jaldhari Paswan and Shivdhari Paswan and Jaldhari had one son Vishun who died leaving behind two wives,

Champa and Gulwa and Shjivdhari Paswan had one son Mahendra Paswan who died in the year 1968. Shivdhari Paswan died leaving behind his widow Dhanpati Devi who is testatrix of the Will in favour of Nagina Paswan in the year 1988.

As per appellants, Thaga Paswan was common ancestor having only one son Nirsu Paswan who had two sons Jaldhari Paswan and Shivdhari Paswan who had one son Mahendra Paswan who married with Champa Devi leaving behind Dhanpati, his wife and daughter in-law Champa Devi whereas Jaldhari Paaswan had one son Bishnu Paswan married with Gulawa Devi, Vishnu had one son Shiv Chandra died at the age of 18, left behind three daughters Chinta, Minta and Lalita and they had no concern with the family of Shivdhari Paswan. After the death of Shivdhari, Champa, daughter-in-law of Dhanpati was looking after her mother in-law and Nagina Paswan by illegal manner obtained Will from Dhanpati Devi whereas Nagina Paswan said that after Shivdhari Paswan, he was looking after Dhanpati Devi.

It has been stated in the application that the Will was prepared by scribe, namely, Mustaque Ahmad and the same was executed in presence of Kameshwar Singh and Umesh Mahto. As Kameshwar Singh died, Umesh Mahto has been examined as A.W.5. Altogether six witnesses have been examined in the present case from



the side of applicant. A.W.1 Nageshwar Paswan has stated that Dhanpati was his cousin grand-mother and Nagina Paswan was looking after her and in her life time, Nagina Paswan was in possession of the land which is subject matter of Will. A.W.2 Rajendra Paswan has also stated the same fact. A.W.3 Anjarul Haque has stated that on 3rd June 1988 he was sitting in front of kiosk of Mustaque Ahmad in his presence on the instruction of Dhanpati he had prepared the Will which was read over and explained to him who after understanding the contents she put her R.T.I. and he has proved the Will. A.W.4 Shambhu Mahto stated that on 3rd June 1988 on the instruction of Dhanpati Devi in his presence the scribe Mustae had prepared the Will which was read over and explained to her and thereafter she put her signature and on her instruction he and late Umesh Mahto had put their signatures as attesting witnesses. A.W.6 Nagina Paswan, the legatee stated that after death of husband and son, he used to look after the Dhanpati Devi and being satisfied with his services, she executed the Will with the term that after her death he will have right over the property. He was also cross-examined but nothing could be extracted.

In support of O.P. one Rajesh Kumar has been examined but he was minor on the date of execution of the Will. So it is very difficult to place reliance on his statement. Champa Devi O.P.no.2 has



said to be daughter in-law of Dhanpati Devi and wife of Mahendra Paswan stated that it is a manufactured and fabricated Will and the G.T. is also incorrect. Golwa Devi O.P.No.3 has also been examined in support of case of O.P. She has also stated that the Will is a forge and fabricated document. One thing is very important in the present case some photographs have been exhibited by the O.P. marked as Ext-C series. At the same time Champa Devi has also produced the I-card issued by the Election Commission where she has been shown to be wife of Mahendra Paswan whereas Gulowa Devi has been shown to be wife of Vishnu Paswan. Antyodaya Yellow Ration Card has also been issued where it has been shown that Champa Devi is wife of Mahendra Paswan. This document has not been examined by the trial court.

The right and title of a party over the property cannot be seen in the present proceeding which will be examined and tested in different proceeding. This Court has to see whether the Will was executed by the Dhanpati Devi was keeping good physical health was in sound state of mind, after understanding the contents of the Will executed the Will having been attested by the attesting witnesses in terms of Section 63 of the Indian Succession Act and 68 of the Evidence Act. On perusal of materials on record, this Court finds that Nagina Paswan could

have proved that Dhanpati Devi was in sound state of mind had executed the Will with full understanding and knowledge of contents put her signature on 30th September 1988.

As there is a dispute with regard to G .T. this Court is not going into the matter and also with regard to right and title of the parties over the disputed land, as has been claimed by Champa Devi, she is wife of Late Mahendra Paswan. Admittedly Mahendra Paswan was son of Dhanpati Devi if she would be able to prove that she is wife of Late Mahendra Paswan, certainly Champa Devi will have share over the property of Shivdhari Paswan.

In such view of the matter, this Court does not find any error in the judgment of the court below. This appeal is accordingly, dismissed. However, liberty is given that Champa Devi, if so advised, may take legal recourse in accordance with law, as this Court in this proceeding is not deciding the right and title over the property which is required to be gone into in the separate properly constituted proceeding.

(Shivaji Pandey, J)

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