

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.442 of 2014

1. Kamla Devi W/o Shri Satendra Pandey, resident of village- Katuna, P.S.- Giriyak, District- Nalanda. At present residing at village- Marauli, P.S.- Roh, District- Nawada.

2. Smt. Malti Devi W/o Sita Ram Pandey, resident of village-Bhoui, P.S.-Shilao, District- Nalanda. At present residing at village- Marui, P.S.- Roh, District- Nawada.

.... Appellant/s

Versus

Anju Devi W/o Late Shiv Narayan Pandey, Resident of village- Marauli, P.S.- Roh, District- Nawada.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Alok Kumar Jha, Adv.

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 11-12-2015

In the present case, the appellants are challenging the judgment and decree 25th March 2011 passed by the Additional District Judge-II, Nawada in Title Suit No.1 of 2001 arising from Probate Case No.16 of 1993 whereby and whereunder the court below has refused to grant probate in favour of appellants.

Short facts of the case are one Julumdhari Pandey is the father of the present appellants as well as of Shiv Narayan Pandey. Julumdhari Pandey gifted his entire lands i.e. ancestral and acquired property to his wife Smt. Rampati Devi and Shiv Narayan Pandey, who was minor on the day of execution of registered deed of gift dated 19th April 1971. The said gift deed was accepted by Rampati Devi and Shiv Narayan Pandey through his mother. Accordingly, both

Rampati and Shiv Narayan came in possession of the gifted property. It has also come that Julumdhari Pandey died in the year 1974 as well as Rampati Devi, mother of testator had also died in the month of *Jeth* 1992 leaving behind Shiv Narayan Pandey, the testator. It has been claimed by appellant Shiv Narayan Pandey was married with one Anju Devi but was insane having no power to understand and, as such, he could not enjoy his conjugal life and on that account Anju Devi was not blessed with any male or female child. As per claim of the appellants, Shiv Narayan Pandey, at the age of 25 became victim of cancer disease. There was no hope for his survival, hence, he voluntarily executed the will dated 11th July 1992 in sound state of mind and body thereby bequeathed the entire property which has been mentioned in Schedule-A of the application filed by the legatee. As has been claimed by the appellants, it was the last Will of Shiv Narayan Pandey, through the said Will entire property was transferred in favour of these appellants, made a provision for maintenance to his wife, Anju Devi. On notice, Anju Devi appeared, filed rejoinder dated 30th September 1994 wherein it has been mentioned that the Will dated 11th July 1992 is a forged and fabricated Will and Shiv Narayan Pandey had never executed the Will to the present appellants. It has been accepted that Julumdhari Pandey had gifted the entire property in favour of his wife, namely, Rampati Devi and Shiv Narayan Pandey. It has been further mentioned that Julumdhari Pandey had



three daughters and not two daughters, namely, Bimla Devi, Kamla Devi and Malti Devi. It has seriously been disputed that Anju Devi was insane, rather it has been claimed that Shiv Narayan Pandey had love and affection with his wife Anju Devi and Shiv Narayan Pandey was never suffering from cancer, rather he was hale and hearty looking after cultivation during his lifetime. The appellants had developed greed over landed property of Shiv Narayan Pandey after death of mother of Rampati Devi. It has been mentioned in the written statement that Shiv Narayan Pandey had gone to village Katuna i.e. Sasural of Kamla Devi on 16th September 1992 where he was killed under a plan, the dead body was sent back by Kamla Devi from her village Katuna through her husband Satyendra Pandey and father in-law Lakhan Pandey along with four other villagers. The dead body of Shiv Narayan Pandey was cremated by the villagers and after cremation one Tripti Singh and four other villagers of Sundara informed her father Chhotan Dubey vide letter dated 21st September 1992 about the death of Shiv Narayan Pandey. After getting information of death of Shiv Narayan Pandey, Anju Devi and her father came to village Sundara and performed *Shraddh* of Shiv Narayan Pandey. Anju Devi filed a complaint case before the Chief Judicial Magistrate, Nawada bearing Case No. 73 of 1994 under Sections 302, 467, 468, 419 and 420 IPC and claimed that Anju Devi is always in possession over the property left by her husband. Later

she sold one piece of land to one Preman Yadav vide registered deeds dated 20th April 1993, 25th May 1993 and 14th July 1994 as described in the written statement.

It is further being claimed that Kamla Devi had filed a case before the Anchal Adhikari, Govindpur, on the ground that Shiv Narayan Pandey was patient of appendix and he died on 18th September 1992 due to lack of treatment. Accordingly, appellant's name was mutated in place of his mother and brother. The order was passed ex parte claiming that the Will dated 11th July 1992 is a manufactured and collusive document so much so that in the mutation case, nowhere it has been stated about Shiv Narayan Pandey was suffering from the disease of cancer.

The court has examined the material on record and considered the claim of Kamla Devi that Anju Devi was insane and was not capable of understanding as well as it has been said that Anju Devi had entered into 2nd marriage. Similarly, statement was made by P.W.3 Malti Devi who is one of the claimant. She also stated that Anju Devi had entered into 2nd marriage. The Court has recorded that the appellants have not produced any material to suggest insanity of Anju Devi and also has rightly recorded that it does not stand to reason when Anju Devi was not a sound lady, how she would be accepted for 2nd marriage, as no one will accept an unsound mind girl in the 2nd marriage. It has also been recorded that the appellants were

not sure in what manner Shiv Narayan Pandey had died. In the probate application it was claimed that Shiv Narayan Pandey had died of cancer disease whereas in the mutation case claim has been made that Shiv Narayan Pandey had died on account of general disease suffered from appendix burst.

The court below has also recorded that it is a *Sada* Will and the appellant Kamla Devi in her evidence has stated that she was not ready to get signature of Shiv Narayan Pandey, compared with admitted signature of Shiv Narayan Pandey.

The appellant Kamla Devi who was P.W.2 before the court below has stated that Malti Devi, Shiv Narayan Pandey, Bhagairath Pandey, Satya Narayan Pandey and this witness were present at the time of preparation and execution of the Will itself shows that the appellants had taken effective part in preparation of the Will so much so that she has stated that Shiv Narayan Pandey himself has written the alleged Will and put his signature along with signature of Bhagirath and Satya Narayan but that Will was not brought before the Court as has been claimed that the Will was a hand written Will but the record shows the Will which was not placed for consideration rather unregistered document claimed to be Will (Ext-1) was written by Bhagirath Shah who has been shown as the writer of the Will. The Court has also considered the issue of manner of death of testator, as in the probate application, the cause of death has been



shown to be cancer whereas in the proceeding before the Circle Officer in mutation case it has been mentioned that their brother had died on account of appendix burst. It has been claimed that Shiv Narayan Pandey died in the clinic of Dr. Shiv Shankar, who has not given the death certificate nor they informed the Municipality about the death of Shiv Narayan Pandey. Further claim has been made that he died in the Government Hospital changing his course of deposition, could not produce any certificate of the Hospital, whereas Malti Devi, P.W.3, one of the appellants claimed that Shiv Narayan Pandey died at Patna in course of treatment. So, it is apparently clear, different person has given different story of place and manner of treatment of Shiv Narayan Pandey, create s highly suspicious circumstance against the appellant with reference to Will.

So looking to the nature of evidence and plea that has been taken, is completely inconsistent and incongruent. It is well known principle of law that the propounder must show the Will was executed in sound and good health and after understanding the contents of the Will without any pressure and undue influence. If Will is shrouded with suspicious circumstances, it is the duty of propounder to dispel all the suspicious circumstances arising there from. In the present case, the Will is surrounded by suspicious circumstances as the propounder of the Will says that Anju Devi was lady of unsound mind but no material has been brought on record to

show that she was insane. In the Will, there is no provision for her save and except maintenance, nothing has been given to the wife. Another suspicious circumstance is Shiv Narayan Pandey had died due to cancer but in the mutation application it has been mentioned that death had occurred on account of burst of appendix. 3rd suspicious circumstance with regard to the treatment, some witness has deposed, testator was treated by private Doctor of Bihar Sharif, another statement, treatment was given at Government Hospital and the next one is that the testator had died at Patna in course of the treatment. So looking to the over all circumstances, this Court is of the view that the court below has not committed any wrong and committed mistake in refusing to grant probate as the present appellants could not dispel the suspicious circumstances arising from the nature of the Will and other attending facts and circumstances.

In such view of the matter, this Court does not find any substance in the present appeal and the same is dismissed.

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(Shivaji Pandey, J)