

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.737 of 2010

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1. Smt. Punita Devi, D/O of late Murat Jha alias Murait Jha, Wife of Sri Anil Kumar Jha, resident of Village + P.O. Anatur, P.S. Bahera, District Darbhanga
 2. Smt. Mundrika Devi, D/O late Murat Jha @ Murait Jha, wife of Chunchun Jha, resident of Village + P.O. Kartho, P.S. Ghanshyampur Sub Division- Benipur, District Darbhanga

.... Appellant/s

Versus

1. Mohan Jha, son of late Shtrughan Jha, resident of Village Subhankarpur Pohaddi, Tola Dihan Dhairukh, District Darbhanga at present Village Lakshmipur, P.O. Pohoddi, P.S. Bahera, Sub Division-Benipur, District Darbhanga
2. Smt. Chandrika Devi, wife of late Shatrughan Jha, resident of Village Subhankarpur Pohaddi, Tola Dihan Dhairukh District Darbhanga

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Waliur Rahman,
Mr. Nishant Kumar Sinha, Advocates.

For the Respondent/s : Mr. Vijayeshwar Prasad,
Mr. Shanti Kumar,
Mr. Shashank Shekhar Sinha, Advocates.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 13-10-2015

Heard learned counsel for the appellants and learned counsel for the respondent.

2. In the present appeal the appellants are challenging the order dated 16.10.2009 passed by the District Judge, Darbhanga in Probate Case No.5 of 2007 by which he has granted probate/letter of administration in favour of Mohan Jha the legatee.

3. Brief facts of the case is that Murat Jha died leaving behind his widow, namely, Radha Devi and four daughters, namely, Smt Mundrika Devi, Smt. Chandrika Devi, Smt. Kishori Devi and Smt. Punita Devi. The testatrix Radha Devi executed



the Will on 8.3.2006 in favour of Mohan Jha, son of late Shtrugghan Jha and Chandrika Devi. Punita Devi and Mundrika Devi are appellants before this Court. Though Kishori Devi filed show-cause but she did not prefer to file any appeal. The Will was executed on 8.3.2006 but the same was registered on 25.8.2006 after lapse of five months. In the meantime, Radha Devi died on 15.3.2006. It is an admitted fact that after the death of Radha Devi the registration was done under Section 41 of the Registration Act. After service of special citation upon the appellants and Chandrika Devi they appeared before the trial court. All of them have filed reply but later on except Chandrika Devi left to take any interest in the proceeding before the court below, whereas Chandrika Devi deposed in favour of Mohan Jha. Mohan Jha, the propounder of the Will has exhibited altogether six documents including the registered Will and proved the signatures. It has been claimed that P.W.1, Kamlesh Jha and P.W.2, Mohan Jha, are attesting witnesses. P.W.4 is Shivchandra Jha in whose presence the Will was executed. Two more witnesses have also been examined as P.W.5, is Rabindra Jha who has deposed that testatrix has expressed her desire to execute the Will in favour of Mohan Jha. P.W.6, Ramchanra Yadav, is a formal witness.

4. In the present case one thing is very startling. The

testatrix died on 15.3.2006 and after lapse of five months the deed of Will was registered. As per law the person who has executed the document was required to remain present for endorsement of his signature on the document but after death the Will was registered itself creates a very suspicious circumstance.

5. Learned counsel for the appellants submits that though the appellants have appeared but unfortunately their lawyer has not taken proper steps and the court below has passed the order in their absence. It has further been submitted that the Will is forged and fabricated document, does not qualify the conditions mentioned in Section 63 of the Succession Act and Section 68 of the Evidence Act. He has further submitted that registration has been done after the death of testatrix makes the document doubtful.

6. In contra, learned counsel for the respondent has submitted that after death of testatrix the Will was produced before the registering authority and on that basis the Will was registered as provided under Section 40 and 41 of the Registration Act. It has further been submitted that the respondent and his witnesses have very much stated about the manner the Will was executed and they have also stated that Radha Devi, the testatrix who had earlier shown her desire before Rabindra Nath Jha (P.W.5) to execute the Will in favour of

Mohan Jha.

7. Having considered the rival contentions of the parties as in the present case an ex-parte order has been passed though the appellants have filed their objection but they did not appear. As there is no challenge to grant the probate though objection was filed by the appellants, the court below has granted the probate in favour of the respondent. This Court is of the view that matter is required to be remanded back to the court below. The court below is directed to grant an opportunity to the parties to substantiate their respective cases and decide the case on its merit. This Court is not giving any opinion on the genuineness of the document or on merit of the case. The court below will be at liberty to examine the case with regard to nature and status of the Will.

8. Accordingly order dated 16.10.2009 is set aside and this appeal is allowed. The case is remanded back to decide the case on its merit.

9. Office is directed to send back the lower court records to the court below forthwith.

Vinay/-

(Shivaji Pandey, J)

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