

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.306 of 2013

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Mostt. Ganga Devi S/o Late Sitaram Yadav, resident of mohalla- Abhanda
Bakarganj, Police Station- Laheriasarai, District- Darbhanga.

..... Appellant/s

Versus

1. Subhash Chandra @ Pintu S/o Ram Naresh Yadav, resident of mohalla-
Bakarganj, Police Station- Laheriasarai, District- Darbhanga.
2. Smt. America Devi D/o Late Sitaram Yadav, resident of mohalla - Abhanda
Bakarganj, Police Station- Laheriasarai, District- Darbhanga.
3. Smt. Mamta Devi D/o Late Sitaram Yadav, resident of mohalla - Abhanda
Bakarganj, Police Station- Laheriasarai, District- Darbhanga.
4. Jageshwar Yadav S/o Late Sitaram, Yadav resident of mohalla - Abhanda
Bakarganj, Police Station- Laheriasarai, District- Darbhanga.
5. Satto Yadav S/o Late Jhanki Yadav, resident of mohalla - Abhanda Bakarganj,
Police Station- Laheriasarai, District- Darbhanga.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Baidyanath Thakur, Adv.
 Mr. Shankar Kr. Thakur, Adv.
 Mr. Bravakar Thakur, Adv.

For the Respondent/s : Mr. Sikumar Sinha, Sr. Adv.
 Mr. Abinash Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 03-08-2015

Heard learned counsel for the appellant and
learned counsel for the respondents.

In the present case, an application under Section
276 of the Indian Succession Act, was filed to grant probate of
the Will dated 7th September 1997 executed by Sitaram Yadav in
favour of his adopted son, namely, Subhash Chandra @ Pintu.

On issuance of notice, the objection was filed by
Mosmat Ganga Devi and others thereby challenged the Will itself
making allegation that the Will has been obtained by fraud and



manipulation. In the application it has been claimed that Sitaram Yadav, at the time of execution of the Will, was the staff of the Civil Court and his wife, Ganga Devi deserted him about 25 years ago and lived with another person, which compelled him to adopt Subash Chandra @ Pintu as a son. On 7th September 1999 without coercion, threat, influence and out of free will he has legated his property through Will in his favour. After his death, the application was filed for the probate.

During the trial, altogether 7 witnesses have been examined from the side of applicant and at the same time on behalf of the opposite party, 6 witnesses have been examined.

The attesting witness, Dasai Yadav stated that on the instruction of Sitaram Yadav, Ram Jivan Choudhary prepared the Will and thereafter that was read over and explained to him and he put his left thumb impression on the Will. On the direction of Sitaram Yadav, Kashi Sahni has put his signature as attesting witness and later on, Dasai Yadav has also put his signature on the direction of Sitaram Yadav.

Bharat Sahni is one of the witnesses, stated that on the direction of Sitaram Yadav, Ram Jivan Choudhary has prepared the Will and later on, it was read over and explained to him whereupon he put his left thumb impression and later on, on his direction, Bharat Sahni and Dasai Yadav have put their



respective signatures so both are the attesting witnesses of the execution of Will but either attesting witnesses or other witnesses have nowhere stated, at the time of execution of the Will, Sitaram Yadav was in sound state of mind and health which is pre-requisite for execution of Will as provided under Section 63 of the Succession Act which prescribes that a person who is executing the Will, must be of sound state of mind and after understanding the contents of the Will without any undue influence and coercion, he testamentated the property by putting signature or gave some sign.

The lower Court, in para 19, has arrived to a finding in negativity where he has stated that there is nothing on the record to suggest that Sitaram Yadav was not in a sound state of mind rather he ought to have recorded a positive finding that at the time of execution of Will, Sitaram Yadav was in sound state of mind on the basis of material available on record.

In such view of the matter, this Court feels that it is a case of remand. Accordingly, the impugned order is set aside and the matter is remanded back to the court below to examine materials and pass order in accordance with law. The parties will have liberty to lead respective evidence with regard to sound state of mind at the time of execution of Will, adversarial party will have also liberty to cross-examine the other side witnesses.

With the above direction this petition is disposed

of.

(Shivaji Pandey, J)

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