

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.541 of 2010

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Sundar Baso Devi W/o Pashupati Singh, R/o Village.- Jaitpur, P.S.- Udwant Nagar,
Distt.- Bhojpur at Ara.

.... Appellant/s

Versus

1. Smt. Patiraj Devi W/o Sri Bharat Singh, R/o Village & P.S. Udwant Nagar,
Distt.- Bhojpura at Ara.
2. The Estate of Late Ramjag Singh S/o Late Ram Kewal Singh, resident of village-
Ranipur, P.S. Paliganj, Distt.- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : M/s Raghunath Singh and Markandeya Singh, Advs.

For the Respondent/s : M/s Kundan Bahadur Singh and Niraj Kumar, Advs.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 26-11-2015

In the present case, the appellant is challenging the judgment dated 27th May 2010 whereby and whereunder the petition dated 9th February 2002 has been allowed, giving direction to issue the letter of administration of the Will.

Ramjag Singh who was the father of the appellant, executed the registered Will in favour of his second daughter, namely, Patiraj Devi which has been objected, is under consideration.

Ramjag Singh has three daughters, namely, Mulkraj Devi eldest one, Patiraj Devi second daughter and youngest daughter is Sundar Baso Devi who is the appellant of this appeal.

Ramjag Singh testamentated his property in favour of second daughter, namely, Patiraj Devi on 11th October 1999 and the

same was duly registered. It has been claimed that out of three daughters, Patiraj Devi was living with her father Ramjag Singh all though and other two daughters were living in their respective sasurals and were not taking any interest and proper care of their father. Ramjag Singh pleased with the service rendered by Patiraj Devi and her husband including her son, executed the Will in her favour with regard to his Estate.

After the death of Ramjag Singh on 9th September 2000, L.A. Case No. 43/2002 / Title Suit No. 10/2002 was filed, on issuance of citation, Sundar Baso Devi appeared and raised the objection that the Will in question is a forged and fabricated and as such, not maintainable liable to be rejected. The land which is subject matter of Will, is a joint family property was acquired by Babu Ram Kewal Singh @ Kulkewal Singh of village Ranipur, he had only son Ramjag Singh who has no male issue but three daughters.

It has further been said that all the three daughters were taking properly attention of their father. It is wrong to say that Patiraj Devi and her husband were taking all care of Ramjag Singh and rest daughters were living in their respective sasurals and they used to attend the father seldom. Plea has been taken that Patiraj Devi and her husband are very cunning and greedy, created a forged and fabricated Will to fulfill their evil design. Further plea has been taken

that Ramjag Singh was a literate person, there was no question of putting his thumb impression over the alleged Will.

It has further been averred, Patiraj Devi, on the strength of Will, filed Mutation Case No. 23/2000-2001 during the life time of Ramjag Singh and the order passed in the mutation case was subject matter of appeal before the DCLR, vide order dated 11/10/1999, set aside the order for mutation, held that all the three daughters have equal share over the property in question.

In support of his case, the plaintiff has produced six witnesses, namely, Jitendra Kumar (AW-1), Ram Kumar Singh (AW-2) and Jainath Singh (AW-3). Ram Pravesh Yadav (AW-4), Ram Murat Prasad (AW-5) and Patiraj Devi (A.W.-6) the appellant on her behalf examined 4 witnesses, but the deposition of two witnesses has been expunged by the court below itself by different orders. Only two witnesses have been left for consideration that is DW-2, appellant herself and DW-3 Baleswar Prasad who supported the case of the appellant.

On perusal of the Will, marked Ext.-2, it appears that it was testamentary on 11th October 1999 in presence of two attesting witnesses, namely, Ram Kumar Singh and Pintu Kumar. The challenge has been made by the appellant that it is a forged and fabricated Will created by the defendant for their own purposes.



It is now well known principle of law, propounder of Will has to prove that the document was executed by testator with full conscious mind without any fraud, misrepresentation or any undue influence and having understood materials of the document and has to satisfy the conditions laid down in Section 63 of the Indian Successions Act and Section 68 of the Evidence Act which provides that at the time of execution of the Will, the testator must be having a good sound of mind and the Will has not been obtained by any fraud, pressure or under any coercion, but the Will must be attested by two attesting witnesses and one attesting witness must come in the court and prove the execution of the Will. It also provides that the Will must have been executed in presence of two attesting witnesses as well as on the direction of the testator, both the attesting witnesses must attested the Will in his presence. While proving the Will, propounder must satisfy the ingredients mentioned herein above and the Will that has come for probate, it should be last will of the testator and while executing the Will, he must understand the nature and contents of the Will. The Will has to be proved like any other documents except special requirement prescribed in Section 63 of the Evidence Act.

The test to be applied for proving the Will is as usual test of satisfaction of prudent mind, in such matter, it is also well



settled that in certain cases, the execution of the Will may be surrounded by suspicious circumstances, it is duty of propounder to remove the same. The suspicious circumstances may be inferred when the alleged signature of testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of testator may not remove the doubt created by the appearance of the signature; the condition of testators may be appeared to be very feeble and debilitated; as well the evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator. If the disposition made in the Will appears to be unnatural, improbable and unfair in view of the attending fact and circumstances, the Will may otherwise indicate that the said disposition may not be the result of the testator's free will and mind and in such cases, the Court would naturally expect that all legitimate suspicious circumstances should be completely removed by the propounder of the Will.

The issue in what manner Will has to be proved and expectation of Court from the propounder of Will has been dealt with in the case of H. Venkatachala Iyengar, v. B.N. Thimmajamma, reported in **AIR 1959 SC 443**. It will be relevant to quote paragraphs 18, 19 and 20 of the said judgment.

Para 18 "What is the true legal position in the matter

of proof of wills ? It is well known that the proof of wills presents a recurring topic for decision in Courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68, Evidence Act are relevant for this purpose. Under S. 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Ss. 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a Court of law.



Similarly, Ss. 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will ? Did he understand the nature and effect of the dispositions in the will ? Did he put his signature to the will knowing what it contained ? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved



like any other document except as to the special requirements of attestation prescribe by S. 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

Para 19 However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of



mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

Para 20 There may, however, be cases in which the execution of the will may be surrounded by suspicions circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light



of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.”

In what manner, the execution of Will has to be proved, has been dealt with in the case of *Dulhin Ful Kueri and another v. Moti Jharo Kuer*, reported in **AIR 1972 Patna 214** where



the question has been raised that the Will has not been properly attested as in the recital portion, the attesting witnesses have not mentioned essential facts with regard to request of Testator and has been executed in his presence as well as on his instruction, they attested the Will. The Court said that if the document bears the signature and the witness comes to the dock and certifies the Will in question has been executed in his presence and on the direction of the Testator, he has put his signature, will satisfy the condition for proper attestation of the Will. It will be relevant to quote paragraph 2 of the said judgment which is as follows:-

“Dealing with attestation of a mortgage in Abinash Chandra Bidyanidhi Bhattacharjee v. Dasarath Malo, AIR 1929 Cal 123, Rankin, C.J., said;

"Now, the word "attested" is the word to be defined because that word when it is used in the Statute with reference to an instrument is really a shorthand expression and the meaning of it is given at length in this Act-Act 27 of 1926. The word "attested" occurs not merely as the thing to be denned but as a part of the definition or explanation and it remains, therefore, to enquire in cases such as the



present, what is meant by saying that a document has been attested or that its execution has been attested. In my judgment, the matter is reasonably clear. A person may be a witness to the execution of a mortgage or a will 'and' yet may not have written his name at the time by way of saying that he was a witness, it is quite clear that in India no formal attestation clause is necessary. Ordinarily a string of signatures towards the end of an instrument or somewhere on the instrument without any explanation will be quite sufficient to show that the persons put their signatures by way of saying that they had seen the document executed or has received an acknowledgment."

Both Section 63(c) of the Indian Succession Act and Section 3 of the Transfer of Property Act say that no particular form of attestation is necessary. If I may say so with respect, Rankin, C.J. is right in observing that mere signature towards the end of an instrument or somewhere on an instrument without any explanation are quite sufficient to show that the persons put their signature



by way of saying that they had seen the document being executed or had received an acknowledgement. Such signatures, in my opinion, are also sufficient to show that they were put in the presence of the testator. However, as required by Section 68 of the Indian Evidence Act, at least one of the attesting witnesses should be examined in proof of the execution of the will. What is required is that in order to prove the due attestation of the will, the propounder of the will has to prove that two witnesses saw the testator signing the will and they themselves signed the will in presence of the testator. In the instant case, one of the attesting witnesses Siujag Tewari has proved it. The appeal, accordingly, fails and is dismissed but, in the circumstances, without costs.”

This issue has again come for consideration what are the essential ingredients for constituting a valid Will in the case of Jagdish Chand Sharma v. Narain Singh Saini, reported in **(2015) 8 SCC 615** there the Court has considered in what manner the execution of the Will has to be testamentary and the role of attesting witnesses while at the time of execution of the Will.

Now in view of the aforesaid judgments propounded essential element and the conditions for proper and valid Will have been delineated by the Court, let us examine the facts whether the propounder of the Will could have proved a necessary element condition for execution of the Will in favour of Patiraj Devi.

The Will in question has been executed by Ramjag Singh by putting his thumb impression, has been identified by Ram Kumar Singh who made statement that Ramjag Singh had put his signature in his presence in right hand side and Pintu Kumar of the same village has also put his signature and in the second page, Ram Kumar Singh also put his signature as an attesting witness. Ram Kumar Singh bears the thumb impression of Ramjag Singh which has been identified by him, has appeared and said that Ramjag Singh asked the Scribe to write down the Will and on his instruction, the Scribe prepared the Will which was read in presence of all persons including the Testator Ramjag Singh who after understanding the contents thereof put his signature on the Will and on his instruction witnesses have put their signature.

In the cross-examination, nothing substantial could be extracted. The other witnesses, Jainath Singh (AW-3) came and stated that at the time of preparation of the Will he was present. Ram Murat Singh scribe prepared the Will which was read over and



explained to all the persons and after understanding the contents of the Will, Ramjag Singh had put his thumb impression and on his instruction, Ram Kumar Singh put his signature and other witnesses have also put their signature. He has further deposed that out of three daughters, Ramjag Singh was very much pleased with Patiraj Devi and on that account, he executed the Will in her favour. Another witness Ram Prवेश Yadav (AW-4) has stated that out of 3 daughters, two daughters were living in their respective sasural whereas Patiraj Devi was living with her father and after his death, son of Patiraj, namely, Jitendra Kumar has lit the pyre at Vanaras and it has been said that Ramjag Singh has executed the Will in favour of Patiraj Devi. Ram Murat Singh (AW-5) who had scribed the Will, has stated that on the instruction of Ramjag Singh, he has prepared the Will and Ram Kumar Singh (A.W.-2) has stated that on the instruction of Ramjag Singh, Will was prepared and after understanding the contents Ramjag Singh had put his signature on the Will and on his direction, Ram Kumar Singh (A.W.-2) and other witnesses had also put their signature. Nothing substantial could be extracted these witnesses. Prati Raj Singh (A.W.-6) is the propounder of the Will has stated that she was living with her father and at the time of execution of the Will, he was sick and was not in a position to put his signature and on that account, he put his LTI on the Will.



During cross-examination, she has stated that she along with her husband including her son was looking after her father. Her son had conducted the Shradh of her father. Ramjag Singh was literate, but due to advance age, his hand was trembled and on that account, he put his thumb impression, so much so, Sundar Baso Devi has come in the witness box and has stated that the Will is a forged and fabricated Will and has claimed that it is a joint family property. All the three daughters have equal right over the land of Ramjag Singh and also seriously disputed the Will that has been executed by Ramjag Singh. She has also disputed the signature of her father, but in paragraph 19 she has stated that she was knowing existence of Will for last one year and while her father was alive who had stated that he had taken steps for cancellation of the alleged Will. She has claimed that her father had filed the case for cancellation of the Will which is pending, but could not produce any chit of paper to show that any such action was taken by her father with regard to the cancellation of Will.

Having considered the rival contentions of the parties, it is very much clear that Will was executed by Ramjag Singh, was supported by two attesting witnesses and one attesting witness has come to the witness box and proved the signature of Ramjag Singh including his signature. He has specifically stated that Scribe of the Will has also come to the witness box and has given the details of



the facts where he has stated to have created the Will on the instruction of Ramjag Singh. So far the suspicious circumstances are concerned, of course there are three daughter of Ramjug Singh, but he preferred only one daughter Patiraj Devi for execution of the Will in her favour thereby, he has given all his property to her. Of course, there are three daughters and one daughter has been chosen, but in the present case, the suspicious circumstances is dispelled when Sunder Baso Devi herself has come to the witness box and has stated that she has seen the Will as well as her father had assured her for cancellation of the Will.

In such view of the matter that she was knowing the existence of the Will for last one year including her father in conscious state of mind, admitted execution of Will but the assurance was given for cancellation of the Will. It appears that her father with the purpose to please her, assured for cancellation of the will but from the record it does not appear that such action was taken by her father Ramjag Singh.

In such view of the matter, this Court finds that the Will has been executed properly and whatever the suspicious circumstances are surrounding to the Will has been removed by the evidence of Sunder Baso Devi herself.

In such view of the matter, this appeal has no merit,

accordingly, the same is dismissed.

Lower court records be remitted back to the court

below.

(Shivaji Pandey, J)

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