

IN THE HIGH COURT OF JUDICATURE AT PATNA**Test case no. 07 of 2015**

In the Goods of Late Kauleshwari Devi Wife of Late Teka Gope,
Resident of village – Ghutia Tola Kathautia, Post Office and P.S.
Chandauti, District – Gaya, Bihar.

AND

In the matter of an application filed u/s 276 read with 300 of Indian
Succession Act for grant of Letters of Administration of
Will dated 31.01.2015 executed by the Testatrix
Late Kauleshwari Devi and registered on 02.02.2015.

AND

In the matter of Sri Surendra Prasad Yadav son of
Sri Bhuneshwar Prasad Yadav, Resident of Rampur, Chiraiyatar,
Jail Road, P.S. Rampur, P.O. - G.P.O., District-Gaya, Bihar and others.

-----Applicants.

Appearance

For the applicant : - Ray Shivajee Nath, Sr. Advocate.
Ray Saurabh Nath, Advocate.
Alok Anand, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 22 -12-2017

1. Heard Counsel for the applicants.
2. The present Test case has been filed for grant of Letters of Administration of will dated 31.01.2015 executed by Late Kauleshwari Devi by three applicants namely Surendra Prasad Yadav S/o Sri Bhuneshwar Prasad Yadav, Anand Kumar S/o Sri Sitaram Yadav and Pappu Kumar S/o Late Laxman Yadav in the capacity of legetee and beneficiary under Will dated 30.01.2015 executed by the



testatrix and registered on 02.02.2015. The properties covered under Will was decreed in favour of testatrix on 07.01.2004 by the learned Sub-Judge-VI, Gaya passed in Title Suit Nos. 51/1998 / 227/1998 / 26/2000.

3. The testatrix Late Kauleshwari Devi was a Hindu governed by Mitakshara School of Law and she died on 09.03.2015 at her village home situated in the District Gaya. The husband of testatrix Late Teka Gope pre-deceased her. The testatrix Kauleshwari Devi had four sons namely Late Laxman Yadav, Ramji Yadav, Suresh Yadav and Surendra Yadav and three daughters namely Jira Devi, Saraswati Devi and Kalapati Devi. Eldest son of testatrix namely Laxman Yadav also pre-deceased her on 07.04.2013. All the 3 daughters of testatrix are married and are living peacefully in their in-laws places.

4. The testatrix Late Kauleshwari Devi executed her last Will on 31st January, 2015 in favour of her three sons, four sons of her pre-deceased son Laxman Yadav, one grand son-in-law and one son of family friend with regard to properties standing in her name as mentioned in para-10 of main application. Vide Annexure-3 to main application, the applicants have declared Rs. 601643496.00 only as the total valuation of entire properties covered under the Will dated 31.01.2015 executed by the testatrix. The testatrix executed her last Will and testament on 31.01.2015 in presence of two witnesses namely (1) Dr. M. Hidayetullah son of Md. Shafiquddin, resident of



Mohalla Nadraganj, P.O. and P.S. Gaya, District Gaya, Bihar and (2) Sohail Akhtar Ansari Son of Bakhtiyarul Haque Ansari, Resident of Mohalla Noor Compound, P.S. Civil Lines, P.O. G.P.O., district Gaya, Bihar. The Will was got registered on 02.02.2015 before the Registering Officer, Gaya Sadar, before whom, Md. Hidayetullah also acted as Identifier of testatrix Late Kauleshwari Devi.

5. After institution of present case on 02.09.2015, General Citation was issued in two local daily newspapers, namely, The Times of India (English) and Dainik Jagran (Hindi), in their Patna Editions on 11th November, 2015 both having wide circulation in the district of Gaya. Special Citations were also issued to 13 Near Relatives mentioned in para-4 of main application, but in-spite of valid service of Special Citations on all the 13 Near Relatives and publication of General Citations in two newspapers, no one has filed caveat or objection to oppose the prayer for grant of Letters of Administration made on behalf of 3 petitioners of the present case.

6. In the aforesaid factual matrices the present case proceeded in uncontested manner.

7. In support of their case, the applicants examined Dr. Md. Hidayetullah as A.W.-1, Sohail Aktar Ansari as A.W.-2, the two attesting witnesses to the Will and Anand Kumar as A.W.-3, who is also applicant no. 2 of the present case. Entire original will dated 31.01.2015 was marked as Exhibit-1 and signature of Sohail Akhtar Ansari over the Will in question as attesting witness was marked as



Ext.-2.

8. During examination of witnesses, both the atesting witnesses namely Dr. Md. Hidayetullah (A.W.-1) and Sohail Akhtar Ansari (A.W.-2) supported the case of applicants/petitioners and stated that on 31.01.2015 Will was drafted as per the desire of testatrix, the contents of which was read-over and explained to her in Hindi and thereafter fully understanding the contents of Will, she voluntarily executed the Will by putting her thumb impressions on each pages of Will in presence of them, the two attesting witnesses. Thereafter, the A.W.1 and A.W.2 also attested the Will in presence of the testatrix at the same time. They also stated that the testatrix executed the Will dated 31.01.2015 in sound state of body and mind out of her own free volition without any outside interference or pressure or coercion. Both A.W.1 and A.W.2 identified the Will as also their own signature over the Will. The Will was got registered on 02.02.2015 before the Registering Officer, Registry office, Gaya Sadar. A.W.1 further stated that he identified the testatrix Late Kauleshwari Devi before the Registrar at the time of registration of Deed of Will.

9. A.W.-3 Anand Kumar stated that the testatrix was the grand mother of his wife and he used to look after the Court cases on behalf of testatrix. He came to know about the present Will dated 31.01.2015 through Dr. Md. Hidayetullah. The testatrix has bequeathed some of her properties in his favour also.



10. After going through the original Will dated 31.01.2015 executed by Late Kauleshwari Devi and depositions of three witnesses, this court is satisfied that the testatrix Late Kauleshwari Devi had voluntarily executed the Will dated 31.01.2015 in presence of two attesting witnesses namely 1. Dr. Md. Hidayetullah and 2. Sohail Akhtar Ansari, which is in full satisfaction to the stipulation made in section 68 of Indian Evidence Act and Section 63 of Indian Succession Act, 1925 in sound state of body and mind without any external pressure after understanding the contents made therein. Hence, this Court finds no difficulty in accepting the case of three applicants. This Court also holds that the Will dated 31.01.2015 is the last Will of testatrix Late Kauleshwari Devi.

11. Let the Letters of Administration of the Will dated 31.01.2015 be issued in favour of three applicants of the case with a copy of Will annexed thereof.

Shahid/-

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	01.12.2017
Uploading Date	23.12.2017
Transmission Date	

