

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.670 of 2010

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Brij Kishore Singh son of Late Suryadeo Nrain Singh,
Resident of village Hajiaur prg sepah, P.O. & P.S. Gopalganj District Gopalganj.

.... Appellant/s

Versus

1. The State of Bihar through Collector, Gopalganj.
 2. Singh son of Late Raghunath Prasad Singh, resident of village Dhebwa Prg Kuari, P.S. & District Gopalganj.
 3. Shambhunath Rai son of Late Kapildeo Rai.
 4. Shatrujit Rai son of Late Kapildeo Rai.
- Both residents of village Sonhula, Prg Kuari P.S. & District Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manan Kumar Mishra, Sr. Adv.
Mr. Vishwajeet Kumar Mishra, Adv.

For the State : : Mr. Narendra Kumar, AC to SC 22.
For the Respondent/s : Mr. Shabbir Ahmad, Adv.
Mr. Shambhu Narayan Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

CAV JUDGMENT

Date: 05-04-2016

Heard counsel for the appellant and the
respondents.

In the present case, the appellant is challenging
the judgment and order dated 19th April 2010 passed by the
District Judge, Gopalganj in Probate Case No.14 of 2001
whereby and whereunder he did not find merit and rejected the
application for grant of Probate along with another Probate
case No. 3 of 2001 which was filed by one Nikhil Kumar
Singh.

The short facts of the case is that Kamla Singh



had three daughters, namely, Rajbanshi Devi, Yadubanshi Devi and Banarasi Devi. The present appellant, namely Brij Kishore Singh is son of Rajbanshi Devi and the property of Banarasi Devi is the subject matter of the Will. On refusal to grant probate, the present appeals were under consideration.

Kamla Singh died in the year 1966 leaving behind his widow Vidyabati Devi and three daughters, namely, Rajbanshi Devi wife of Suraj Narayan Singh, Yadubanshi Devi wife of Kapildeo Ram and Banarasi Devi wife of Dhrupdeo Singh. Rajbanshi Devi died leaving behind her one son. Rajbanshi Devi and Vidyabati Devi, both died in the year 1973. After death of Vidyabati Devi and Rajbanshi Devi, namely, Yadubanshi Devi, Banarasi Devi and Brij Kishore Singh partitioned the entire property of Kamla Singh, each inherited the property according to their respective share. As per the claim of the appellant, Banarasi Devi did not have good relationship with her husband, she died issueless. Banarasi Devi was leaving with Brij Kishore Singh, treating her as his mother, was looking after her property. Being pleased with the manner the appellant was looking after Banarasi Devi and giving service to her satisfaction, executed a deed of Will in favour of Brij Kishore Singh on 3rd June



2000 and later on Banarasi Devi died on 13th July 2000, just after lapse of approximately one month of her death, Brij Kishore Singh filed probate case with a prayer to grant probate with regard to Will executed by Banarasi Devi.

In the present case it also appears that Nikhil Singh, nephew of Dhrupeo Singh (husband of Banarasi Devi) who is son of Anirudh Prasad Singh is also a stake-holder to the property of Banarsi Devi. Anirudh Prasad Singh and Dhrupeo Singh are own brothers. It has been claimed by Nikhil Kumar Singh that Banarasi Devi died issueless. It is Nikhil Singh who was looking after Banarasi Devi, treating him as her son. Being pleased with the services of Nikhil Singh, Banarasi Devi executed the will in favour of Nikhil Singh which was scribed by Pradip Kumar Singh which was read over the contents of the Will and after proper understanding, Banarasi Devi put her signature. The will was attested by two attesting witnesses, namely, Dhrupeo Singh (husband of Banarasi Devi) and Nagendra Prasad Singh. Also claimed that Banarasi Devi died on 13th July 2000 and later on for probate, Probate Case No.3 of 2001 was instituted.

After registration of the case and issuance of citation, Ganga Dayal Yadav, one of the Opposite parties filed



his objection stating that both the cases be amalgamated claiming non-maintainability of the present case claiming that the Will which is subject matter of probate case is a forged Will in order to defeat the title of Ganga Dayal Yadav, who had purchased the land bearing plot no. 129 area 2 katha 1 dhur of village Jangalia, same was allotted to her in the partition and there the O.P. had already constructed double storied building and market place, amalgamating the purchased land and his own land.

It has been claimed that Banarasi Devi was the sole owner of plot no. 129 area 2 katha 1 dhur. With regard to that land, plea was taken by Ganga Dayal Yadav that Kamla Singh, father of Banarasi Devi had executed registered deed of gift dated 22nd June 1963 in her favour.

Ganga Prasad Yadav has taken a plea of Banarasi Devi gave 1 dhur and 10 dhurkies of land of plot no. 129 by registered deed dated 3rd January 1994 created heart burning to Brij Kishore Singh and under pressure of Brij Kishore Singh, Banarasi Devi filed T.S.No. 426 of 1996 which has been pending on the day of objection filed by Ganga Prasad Yadav.

It has further been stated that after death of



Banarasi Devi, Dhrupdeo Singh, her husband became owner of plot no.129, minus the area he sold to the O.P.No.5 vide registered sale-deed dated 16th December 2000 for consideration amount of Rs.1,65,000/-. He received the same and put the O.P. in possession. In pursuance thereof, a double storied residential house and a market complex have been constructed.

Gangadayaal Yadav had filed a written statement in Probate Case No. 2 of 2001 which was filed by Nikhil Kumar Singh, brother of Dhrupdeo Singh. There also he has claimed that the Will which is subject matter of Probate Case No.3 of 2000 is also a false and fabricated Will. One very startling fact has emerged as has been claimed both the Wills are fraudulent ones, petitioners of both the cases colluded to each other, entered into an unethical agreement. In pursuance thereof, Brij Kshore Singh vide registered sale-deed dated 26/02/2002 transferred 6 katha of land of plot no.750 of village Harakhua to Nikhil Kumar Singh and in a consideration of the same, Dhrupdeo Singh got filed a collusive compromise petition filed on the same day supporting the Will executed in favour of Brij Kishore Singh, is genuine and Nikhil Kumar Singh withdrew his Probate Case No. 3 of 2001. It has further



been mentioned in the written statement that on comparison of signature from necked eyes with the admitted signature on exchange deed dated 3rd January 1994 executed by Banarasi Devi the signature at will does not tally. On that basis Ganga Dayal Yadav came in possession over plot no.129, would show that the signature at two places are completely at variance to each other and also denied that Banarasi Devi had ever lived with the petitioner of Probate Case No.3 of 2001. In specific term, plea has been taken that the so called signature and writing on the Will is not of Banarasi Devi, rather it is in the handwriting of some stranger. It is further claimed that with the connivance of scribe and the attesting witnesses, the will was created. Further claim has been made that the deed of will has been executed by other lady in place of Banarasi Devi, as Banarasi Devi was too old and confined to bed and on account of fracture in leg made her unable to move, later on she lost mental capacity and balance, was not understanding anything. Dhrupdeo Singh also appeared, filed written statement there he has stated that he had never divorced Banarasi Devi and she was living in her Naihar was also disputed. It has been claimed that Banarasi Devi remained with Dhrupdeo Singh who used to look after her personally as also used to take care of her



agricultural operation. It has further been stated that Banarasi Devi had never gone to the Registry Office and the Will was never scribed by scribe Sunil Kumar, claiming that the Will appears to be forged and fabricated as is clear from the signature of Banarasi Devi which can be verified with necked eyes. It has further been said that Banarasi Devi had executed sale-deed dated 30th June 2005 in favour of Gokul Choudhary. If any comparison is made, the signature existing on the Will does not tally with the admitted signature of Banarasi Devi. Banarasi Devi was ill since two months prior to her death, not in a position to understand anything, ultimately she died on 13th June 2000. It has been claimed by Dhrupdeo Singh that he had performed the Shraddh. Shambhu Nath Rai and Satyajit Rai, Respondent nos. 3 and 4 filed their separate written statements in Probate case no.3 of 2001 and Probate case no.14 of 2001. It has been said that Banarasi Devi was residing at Hajipur but not with Nikhil Kumar Singh, rather she was residing with them and treating them as sons. Wrong claim has been made that Nikhil Kumar Singh had served Banarasi Devi and being pleased she executed the Will and disputed that she got scribed the will by Pradip Kumar Singh nor she got it attested by Dhrupdeo Singh and Nagendra Dwivedi, claimed



that the Will dated 21st June 2000 in favour of Nikhil Kumar Singh is forged one. Identical statement has been made in connection with Probate Case No.14 of 2001. They have taken a stand that on account of strained relationship with her husband, Banarasi Devi was living with them and disputed that Banarasi Devi had ever gone to Registry Office, got the will scribed and signed the same, either the first alleged Will or the 2nd Will which was alleged to have been executed in favour of Brij Kishore Singh, appellant. It has further been stated that the claim made by Brij Kishore Singh that he is sole heir of Rajbanshi Devi is false. Rajbanshi Devi had two daughters namely, Sumitra Devi and Rambha Devi. It has been claimed by the respondent nos. 3 and 4 that their mother after marriage remained with her father and there she gave birth to both the sons i.e. respondent nos. 3 and 4 respectively and she continued to reside at Hajipur, started performing all the family rituals and merged with the Pind of Kamla Singh. In the written statement it has been claimed that Shraddh was performed by Shambhunath Rai, sole heir of Kamla Singh. Banarasi Devi was ashtama patient and was being treated by Dr. Ghosh, was unable to give birth to a child and was residing along with Yadubanshi Devi and ultimately she died on 13th

July 2000. In the nut shell, both the respondents have disputed the correctness of the Will claiming to be forged and fabricated ones, does not create any semblance of right in favour of either of legatees.

1st in support of his claim, complainant of Probate Case No.14 of 2001 i.e. Brij Kishore Singh examined altogether eight witnesses. A.W.1 Murli Manohar Prasad proved the carbon copy of Sanha marked as Ext-1, A.W.2 Paras Nath Prasad has also proved the certified copy of the Will dated 3rd June 2000 marked as Ext-2, A.W.3 Upendra Singh has proved the compromise petition dated 26th February 2002 marked as Ext-4, A.W.4 Lal Babu Prasad, A.W.5 Brij Kishore Singh (the present appellant), A.W.6 Ganesh Prasad have proved the partition deed dated 13th September 1983 marked as Ext-5, A.W.7 Ranjit Kumar has proved the negative marked Ext-6 to 6/9 and A.W.8 Daksh Narayan Singh is the handwriting expert whose report has been marked as Ext-8 whereas the objector defendant-appellant examined six witnesses, namely, D.W.1 Hari Shankar Prasad who has proved the sale-deed dated 26th September 1983 executed by Tilakdhari Singh in favour of Jitendra Singh marked as Ext-E to E/3, D.W.2 Upendra Kumar has proved the sale-deed executed by Dhrupeo Singh on 9th



October 2004 marked Ext-F, D.W.3 Bashishtha Choudhary D.W.4 Shatrujit Rai, D.W.5 Raghbir Prasad had taken photographs and have proved the negatives of photographs of Banarasi Devi marked as Ext-H to H/5 and D.W.6 Rajiv Ranjan Srivastava is handwriting Expert who proved his report marked Ext-G. Ext-H to H/5 is the negative of signature of Banarasi Devi and its enlargement positive marked Ext-I to I/2 and Ext-J is the Expert report on the signature of Banarasi Devi.

At this stage it is very relevant to state that in both the cases, the original copy of Will has not been filed by any of the parties, namely, Nikhil Singh or Brij Kishore Singh. In Probate Case No. 14 of 2001 certified copy has been filed by Brij Kishore Singh claiming original to have lost in transit. Ext-3 is the sale-deed dated 3rd June 2000 in favour of Alamgir in whose favour purportedly Banarasi Devi sold her share of land. Ext-4 is the compromise petition in between Nikhil Singh and Brij Kishore Singh, thereby Nikhil Singh has withdrawn his claim with respect to the Will dated 21st June 2000 executed in his favour. Ext-5 is the partition deed dated 13th September 1983, Ext-6 to 6/9 are negative films related to signature of Banarasi Devi and the same has been converted as negative marked as Ext-7 to Ext-7/r. Ext-9 is certified copy of voter list.



According to Section 59 and 63 of the India Succession Act and Section 68 of the Evidence Act, the propounder of the Will has to prove that the testatrix had executed the Will in a sound and disposition state of mind after understanding the contents made therein without any pressure and undue influence and if any suspicious circumstance is surrounded to the will, it is the duty of the propounder to remove all suspicious circumstances, in a case when objector makes allegation that forgery has been perpetrated and it is not the Will executed by the testatrix. Duty is cast upon the objector to prove who has taken a plea of forged and fabricated execution of the Will. It will be relevant to rely on the judgments reported in

AIR 1959 SC 443 (H. Venkatachala Iyengar v.

B.N.Thimmajamma and others).

2001(4) PLJR 147 (SC) (N.Kanalam & anr.

.V. Ayyasamy and anr.)

(2015)8 SCC 615 (Jagdish Chand Sharma v. Narain Singh Saini.

AIR 1969 SC 1147(M.L.Abdul Jabbar Sahib v.

M.V.Venkata Sashi & sons and others)

AIR1965 SC 1358 Commissioner of Income Tax,

Madras v. The Ajax Product Ltd.)

(2013)7 SCC 490 M.B.Ramesh v. K.M.Veeraju Urs

and

others)

For valid Will, it is to proceed that the testator has executed the will in sound disposition mind after understanding the contents of instrument and its repercussion and the document must be executed by testatrix in presence of two attesting witnesses and on the instruction of testator, both witnesses must have attested the document. It further provides one attesting witness, if he is available, must come forward to depose in the court in support of execution of the Will. In absence of basic ingredient the Will is not treated to be validly executed. Under S. 67 of Evidence Act if a document is alleged to have been signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting, in terms of Ss. 45 and 47 of the Act the opinions of experts and the person/persons acquainted with the handwriting of the person would be competent and proper witness. Section 68 of the Evidence Act deals with the proof of the execution of the document required by law to be attested. It provides that if a document is required by law to be attested 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 has produced the will for probate. In terms of Section 63 of the Succession Act the testator shall sign or shall 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. 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. There is a distinguishing feature of 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. There may, however, be cases in which the execution of the will may be surrounded by suspicious 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 doubts as to mental capacity of testator. 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. 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.

It is relevant to quote Para 18, 19, 20, 21 and 22 of the judgment in the case of H. Venkatachala Iyengar v. B.N. Thimmajamma and others (supra):

“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.

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.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious 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.

21. Apart from the suspicious circumstances to which we have just referred in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said



suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English Courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical Courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word 'conscience' in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the Court is the last will of the testator, the Court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said



*suspensions from the mind of the Court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parc in *Harmes v. Hinkson*, 50 Cal W N 895 : (A I R 1946 P C 156) "where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth," It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect."*

On the aforesaid principle, the case has to be examined. In the present case, Nikhil Kumar Singh has filed the case which was registered as Probate Case No.3 of 2001 claiming that Banarasi Devi executed the Will in his favour on 21st June 2000. The present appellant has also filed probate Case No.14 of

2001 claiming to be son of one of the sisters having intimate relationship, executed the Will by the process of registration dated 3rd June 2000. On 3rd June 2000, the propounder has claimed that she has created two documents, the first Will and another sale-deed was executed by her in favour of Alamgir.

In the present case, Alamgir has not deposed about the purchase of property from Banarasi Devi. One important aspect in the present case is, the original document has not been filed by Brij Kishore Singh, explanation has been given in his deposition that while he was going for photo stat somewhere it had fallen and became traceless but it creates suspicion in view of the fact that the original document with regard to sale-deed Ext-3 has been produced and also it is peculiar that if the sale-deed has been executed in favour of Alamgir, in what circumstance it has reached to the possession of Brij Kishore Singh. Normally, the sale-deed should have been with the person in whose favour the same was executed. One also important factor is that Brij Kishore Singh in his deposition in Para-42 has stated that *Wasiatnama* was not created on the stamp rather the same was written on the plain paper. That itself creates a strong suspicion about the genuineness of the Will. The second suspicious circumstance is that in Para-31 it shows that he and his son have actively taken part in the execution of the Will

where he has stated that Banarasi Devi came to the Registry Office and he went there by cycle, apart from them, Babbanbabu, Alamgir and Narmadeshwar Kumar were also present at the time of execution of the Will. It suggests that he very much actively participated in the execution of the Will.

Next question is that it has been alleged by the caveator-respondent that the Will was executed on 21st June 2000 and just thereafter on 31st June 2000 Banarasi Devi died. It is apparently clear from the recital of the Will that Banarasi Devi was ill. Brij Kishore Singh himself has accepted that Banarasi Devi was ill but claimed that at the time of execution of the Will she was in sound state of mind, was capable to understand the contents of the Will.

In contra, the respondents have said that at the time of death, she had been continuously ill, her mind was not working properly, she was not in a position to understand anything so much so that she was at the advanced age.

One of the witnesses from the side of defendants, namely, Bashishtha Choudhary (D.W.-3) was examined who has stated in Para-2 and 3 that he was personal servant of Banarasi Devi. She was Asthmatic patient having no issue, was living with Shatrujit Rai and along with the family members they used to look



after Banarasi Devi. She was ill for long time, at the time of her death she lost mental balance to understand things so much so that she was suffering from leg fracture, at the time of death she was consigned to flames with the plaster. In cross-examination, the appellant has not put any question rather cross-examined him on different aspects of the matter. This witness is a very important witness showing that the mental condition of Banarasi Devi was not capable to understand anything as she was ill since long, added that leg fracture remained under plaster at the time of death, the body was consigned to flames with plaster. It creates a strong suspicion against the propounder.

One thing is also important here, earlier attesting witness was to be examined, but another attesting witness namely, Paras Nath (A.W.-2) came and proved the execution of signature by Banarasi Devi. He has stated that in his presence, scribe Sunil Kumar read out the Will and made her understood the contents thereof whereafter she put her signature and on the direction of Banarasi Devi, he and Baban Rai put their signatures.

In cross-examination in Para-6 it has been stated that Banarasi Devi came to her seat on foot and denied that she was suffering from leg fracture and was incapable to move. The evidence of this witness does not inspire confidence and does not



reflect true picture in view of the fact that recital of Will as well as statement of Brij Kishore Singh showing the fracture of leg of Banarasi Devi, but the private servant, Bashistha Choudhary (D.W.-3) had come to the dock and deposed that she died along with plaster and she was consigned to flames along with plaster. Another thing is that earlier Babban Rai was shown as a witness, later on Paras Nath (A.W.-2) came forward and proved the Will claiming to be the attesting witness. Brij Kishore Singh stated that Babban Rai shifted loyalty on the side of O.P. but if he would have come in the witness box, he would have narrated the real story.

In this case, genuineness of the Will has been challenged claiming to be a forged and fabricated Will and claiming that the Will does not bear the signature of Banarasi Devi. Expert from both sides were deployed and their services were taken. They have submitted the respective reports. Sri D.N. Srivastava has submitted the report from the side of Brij Kishore Singh stating that the signature of Banarasi Devi is congruent and tallies with her admitted signature and claimed that the Will bears the real signature of Banarasi Devi, whereas from the side of O.P. another Expert, namely, Sri R.R. Srivastava (D.W.-6) has submitted his report. This Court examined in what manner both the experts have examined and submitted their respective reports. The manner



scientific report was created by Sri R.R. Srivastava appears to be more scientific than to the report submitted by the hand-writing Expert engaged by the present appellant so much so that from the necked eyes even a normal person on making comparison of the signature of Banarasi Devi on the Will as well as on the admitted signature on another document, even a lay man would say that the signature which is existing on the Will is not the signature of the person who has put her signature on the admitted document. There is difference in the manner 'Banarasi' has been written on the admitted signature as well as the disputed signature. There is a lot of difference and does not resemble with each other as in the Will somewhere "Ba" has been written, somewhere "Wa" has been written but in the admitted document "Banarasi" has always written as "Wa" and not "Ba". There is difference in writing of "Ra" as well as in Matra of signature at two letters, So the two signatures are quite different in manner of writing slant and also different words have been used. So even a lay man can say that the Will claimed by Banarasi Devi is not of her. Further it also creates doubt, earlier Nikhil Kumar Singh had claimed to be also a beneficiary of the Will created by Banarasi Devi but later on a compromise petition was filed showing that they have entered into the compromise and Nikhil Singh accepted the geniuses of the Will

produced by Brij Kishore Singh. Why it has been done is explained by other side as in order to purchase this compromise, Brij Kishore Singh had transferred the land in favour of husband of Banarasi Devi who was really instrumental in creation of the purported Will in favour of Nikhil Kumar Singh.

Taking into consideration the attending facts and circumstances, this Court is of the view that the court below has not committed any wrong in refusing to grant probate from any angle whatsoever may be. As it appears to be unnatural as Brij Kishore Singh is son of one of the sisters whereas other objectors also are sons of other sisters but while creating the Will no provision has been made in favour of caveator-respondents. When the servant has come forward and submitted that Banarasi Devi was living along with Shatru Prasad Singh.

In such view of the matter, this appeal is dismissed.

Jay/-

(Shivaji Pandey, J)

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