

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.437 of 1977

Against the judgment and decree dated 12.03.1977 passed by 6th Additional District Judge, Ara (Bhojpur) in Title Suit No.07 of 1974.

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Dulhin Budhia Devi

.... .. Plaintiff-Appellant

Versus

Japti Kuer

.... .. Defendant-Respondent

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Appearance :

For the Appellant : Mr. Ashutosh Ranjan Pandey, Advocate.

For the Respondent : None.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 07-03-2017

The plaintiff has filed this first appeal against the judgment and decree dated 12.03.1977 passed by 6th Additional District Judge, Ara (Bhojpur) in Title Suit No.07 of 1974 whereby the learned Additional District Judge has dismissed the suit.

2. The plaintiff-appellant filed an application under Section 278 of the Indian Succession Act for the grant of letters of administration with respect to the Will dated 31.03.1970 said to have been executed by Most. Ramdei Kuer, widow of Ram Lal Choudhary.

3. The appellant claimed the letters of administration alleging that Ramdei Kuer was being looked after by the appellant and Ramdei Kuer had great love and affection. The appellant is the step



daughter of Lagna Kuer, who was daughter-in-law of Ramdei Kuer. She executed the Will in sound state of mind and health. After knowing the details of the Will she put her L.T.I. in presence of witnesses on the Will, therefore, the appellant is entitled to the letters of administration with respect to the assets mentioned in Annexure A to the application under section 278 of the Indian Succession Act.

4. The objector-respondent Japti Kuer filed objection alleging that the Will is forged and fabricated document created by the husband of Budhia Kuer, namely, Rajnath Choudhary. The contents of the Will were not read over and she was not in sound mind and health nor she put her L.T.I. in presence of the witnesses on the Will.

5. The objector further alleged that this objector and Most. Lagna Kuer were the two step daughters of Most. Ramdei Kuer. Both of them have got half share in the property of Ram Lal Choudhary, their father, after the death of Most. Ramdei Kuer. Accordingly, they partitioned the property and came in possession to the extent of half share each. Subsequently the objector had sold some property by executing sale deeds in favour of Motilal Singh and Bhagwan Singh. The appellant Bhudia Devi has also purchased some lands from the objector. 144 Cr.P.C. proceeding was fought between Rajnath Choudhary and his wife Budhia Devi and the purchasers from this objector.



6. The learned court below on the basis of the pleadings registered the letters of administration case as title suit and thereafter proceeded to decide the genuineness or otherwise of the Will in question. Ultimately after appreciation of evidences the learned court below found that the Will in question is not a genuine document and, accordingly, dismissed the suit.

7. The learned counsel Mr. Ashutosh Ranjan Pandey for the appellant submitted that the court below wrongly dismissed the letters of administration case by misappreciating the evidences. The appellant examined the scribe and also one of the attesting witnesses. Even the plaintiff-appellant has specifically stated that the testator knowing the contents of the Will put her L.T.I. and the plaintiff also examined an expert in support of her case. The expert submitted report that the L.T.I. on Will is L.T.I. of the testator but the court below rejected the evidence on flimsy grounds.

8. The learned counsel further submitted that the appellant's husband was also examined. Evidences have been produced to show that the testator was being looked after by the plaintiff-appellant and she was of sound mind and health but the learned court below did not place reliance on the evidence of the plaintiff and rejected the application under Section 278 of the Indian Succession Act.



9. As stated above no body appeared on behalf of the respondent.

10. In view of the submission of the learned counsel for the appellant the only point required to be decided in this appeal is whether the Will is properly attested and is a genuine document or not.

11. P.W.6 is the scribe of the Will. Will has been marked as Ext.9. PW.11 is one of the attesting witnesses. The other attesting witness Ramkishun Singh has identified the testator before the Sub-registrar at the time of registration of the Will.

12. P.W.6, who is said to be the scribe, has stated in his cross-examination that both the attesting witnesses Ramkishun Singh and Radhakishun Sah did not attest the Will in his presence. The certificate, which has been marked as Ext.6 which is in his pen, was made only at the instance of Rajnath Choudhary, the husband of Budhia Devi. This P.W.6 has categorically stated that at the time of registration he was not present at Jagdishpur. He has also stated that a draft of Will was given to him by Rajnath Choudhary in the village and he prepared the Will on the basis of the draft handed over to him by Rajnath Choudhary. Now let us consider the evidence of attesting witness PW.11.

13. P.W.11 is Radhakishun Sah. He has been examined



on commission. In his examination-in-chief he stated that the Will was not read over to Most. Ramdei Kuer. He put his signature on a paper at the instance of Rajnath Choudhary and Most. Ramdei did not put her L.T.I. in his presence. Except these two witnesses, who are vital, no other attesting witness has been examined in support of the attestation. It may be mentioned here that P.W.11 was never cross-examined by the plaintiff-appellant after obtaining permission from the court because he in his examination-in-chief controverted the case of the plaintiff-appellant. Now, therefore, merely because the Will is registered, no reliance can be placed on it particularly when the Will (Ext.9) is not proved according to Section 63 (3) of the Indian Succession Act. On the contrary the attesting witness has clearly stated that he signed on a paper and Ramdei Kuer never put her L.T.I. in his presence. The scribe also has controverted the case of the plaintiff-appellant. The evidence of both these witnesses clearly proved the fact that the husband of the plaintiff was playing prominent role in getting the Will with respect to the property of Ramdei Kuer in the name of his wife. At his instance the scribe prepared the Will in the village. The testator did not sign in presence of the scribe nor the Will was read over and explained to the testator.

14. The other circumstance is that Most. Japti Kuer has sold some of the properties, the documents have been produced by the



objector-respondent which have been marked as Ext.A series. It further appears that 145 Cr.P.C. proceeding was initiated between Rajnath Choudhary and the purchasers from Japti Kuer. Ext.C is the application filed by Rajnath Choudhary and the compromise application is Ext.D wherein Rajnath Choudhary accepted the title and possession of the purchasers.

15. Over and above the aforesaid documents the defendant-respondent has produced as Exts.A/7 and A/8, the two registered sale deeds, in support of the fact that the plaintiff-appellant has purchased some land from the objector Japti Kuer. Now, therefore, the plaintiff-appellant also accepted the right, title, interest and possession of Japti Kuer. The sale deeds are of the year 1973. The Will is registered in the year 1970. The question is if the Will is in favour of the plaintiff-appellant then she was the rightful owner of the property as it was executed by the owner Ramdei Kuer. There is no explanation at all as to why she purchased the property from the objector.

16. In view of the above facts and evidences it is clear that the Will has been created by Rajnath Choudhary, the husband of the present appellant. This Will is not proved according to law nor is attested according to law. The evidence of P.W.6 and P.W.11 read with Exts.A/7, A/8 clearly prove that the document was even not



executed at the instance of Ramdei Kuer nor the document was read over and explained to Ramdei Kuer. Therefore, even if her L.T.I. is there, it will make no difference. In other words, on the basis of L.T.I. only in no case it can be termed as a genuine Will.

17. In view of my above discussion I find that the Will in question is not a genuine Will. The finding of the trial court on this point is, therefore, confirmed.

18. In the result, this First Appeal is dismissed.

(Mungeshwar Sahoo, J)

Harish/-

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