

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.234 of 2014

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Sushila Devi @ Kaushalya Devi, Daughter of Late Sheo Barat Singh, Wife of Anil Singh At present resident of village- Bahera, Bhurkunda, P.S.- Barachatti, District- Gaya.
.... Appellant.

Versus

1. Sri Kamala Kant Singh Son of Sri Brahma Lal Singh Resident of Village- Bahera, Bhurkunda, P.S.- Barachatti, District- Gaya.
... .. Applicant/Respondent 1st Set.
 2. Smt. Photo Devi Wife of Sheo Barat Singh At present resident of village- Bahera, Bhurkunda, P.S.- Barachatti, District- Gaya.
 3. Murari Singh
 4. Meena Devi D/o late Balmukund Singh All residents of Village- Ghorsari, P.S. Barachatti, District- Gaya.
 5. Anil Singh Both Sons of late Balmukund Singh
 6. Smt. Mira Devi @ Munni Devi Daughter of Late Sheo Barat Singh, Wife of Sri Kant Singh Resident of Village- Paruri, P.S. Hanterganj, District- Hazaribagh.
 7. Damyanti Devi @ Billu Devi Daughter of Late Sheo Barat Singh, Wife of Pawan Singh Resident of Village- Uchirama, P.S.- Sherghati, District- Gaya.
.... Objectors/Respondent 2nd set.
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Appearance :

For the Appellant : Mr. Jitendra Prasad Singh, Advocate.
Mr. Abhishek Kumar, Advocate.

For the Respondent No.1 : Mr. Ramesh Kumar Choudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 15-11-2017

Heard learned counsel for the appellant and learned counsel for the respondent no.1 on this miscellaneous appeal. None turned up on behalf of respondent nos.2 to 5 to advance the argument in the case, despite service of notice and putting appearance in the case.

2. This miscellaneous appeal has been preferred against the judgment dated 16.12.2013 passed by the 1st Additional District Judge, Gaya in Title Suit No.04 of 1992, whereby the learned lower Court allowed the probate petition of respondent



no.1 to grant probate of will dated 04.05.1984 finding the same as genuine.

3. The factual matrix of the case is that respondent no.1 filed petition to grant probate in respect of will dated 04.05.1984 executed by Sheo Barat Singh in his favour with the case that the said Sheo Barat Singh had executed a will in his favour on 07.05.1984. The said Sheo Barat Singh had died on 07.07.1984 during course of treatment. He has executed the said will out of his sweet will and fully understanding the same in his good health and mind. The said will is his last will. Appellant who happens to be one of the daughters of Sheo Barat Singh and respondent nos.2 to 5 filed written statement against the said petition with the case that Sheo Barat Singh has not executed any will in favour of the respondent no.1. Said will is forged, fabricated and antedated and had never seen the light of the day much less during the life time of Sheo Barat Singh. Sheo Barat Singh has died leaving behind the appellant, his widow, unmarried and married daughters. The said will is regarding the entire agricultural land of village Bahera admeasuring 67 decimals which also includes the residential house of the appellant, his widow and daughters and they are living therein but no provision for living of the appellant and widow and other daughters of Sheo



Barat Singh has been made in the said will which make the will suspicious because a prudent man could not part with the entire land and residential house in favour of grandson of his brother excluding his widow and daughters and leaving them helpless. The said act of Sheo Barat Singh is most unnatural and unbecoming of a prudent man. As a matter of fact Sheo Barat Singh was ill in the year 1984 and his treatment was going on in Ranchi hospital. The executor and his father were present in the said hospital on the pretext of looking after him and they had taken his signature on plain paper in absence of appellant and other heirs of Sheo Barat Singh and on the pretext of his better treatment might have converted the same into will.

4. In buttress of his case, respondent no.1 examined three witnesses, namely, Sri Mistry who happens to be one of the attesting witness, Brahmlal Singh and respondent no.1 himself. While the appellant and other respondents after filing the written statement disappeared and did not adduce any ocular or documentary evidence in buttress of their case.

5. After hearing the parties and perusing the record, the learned lower Court allowed the aforesaid petition vide impugned judgment.

6. Being aggrieved and dissatisfied with the



impugned judgment one of the defendants of the said suit has filed this miscellaneous appeal.

7. It is submitted by learned counsel for the appellant that there are three attesting witnesses of the will but only one attesting witness has been examined by the respondent no.1 in proof of the will. It is further submitted that the said attesting witness has also not deposed about the testamentary capacity of the testator at the time of execution of the will. Further submission is that the testator has died leaving behind his widow and three daughters who have been living in the said house but no provision for their living and earning has been made in the said will and excluding them the will has been executed in favour of the grandson of the brother of the testator. The said act of testator is quite unnatural and unbecoming of a prudent man and the said aspect of the case creates serious doubt and suspicion about the will.

8. On the other hand, learned counsel for the respondent no.1 has submitted that even one attesting witness is sufficient to prove the will. It is further submitted that provision for widow and daughters of Sheo Barat Singh has also been made by him as mentioned in the recital of the said will. It is further submitted that though attesting witness has not deposed regarding



the testamentary capacity of the testator but the recital of the will itself candidly indicates that the testator has executed the will out of his own sweet will and in the state of good health and mind. It is further submitted that the respondent no.1 happens to be the grandson of the brother of the testator and he and his father rendered the services to the testator and being pleased with their services rendered to him, the testator has executed the will in favour of respondent no.1. Hence, the will is genuine and is duly proved by his witness.

9. From perusal of the record, it appears that the appellant and respondent nos.2 to 5 put their appearance before the lower Court and filed written statement but, later on, left the pairvi in the case and did not adduce any evidence in buttress of their case rather only respondent no.1 has adduced the evidence in buttress of his case. From perusal of the will in question, it appears that there are three attesting witnesses of the will, namely, Sri Mistry, Chandradeo Singh and Krishna Prasad. Out of them one attesting witness Sri Mistry has been examined by respondent no.1. From perusal of testimony of said witness it appears that he has precisely stated that Sheo Barat Singh executed the will in favour of Kamla Kant Singh before him on 04.05.1984. The contents of the said will was read over and made understand to



him and witnesses put their signature on the same. He also put his signature on it and he has identified his signature on the said will. Though the said witness has not stated about the testamentary capacity of the executor, but from perusal of the will it appears that in the recital of the will itself it is mentioned that the testator had executed the will in his good health and mind and after fully understanding the contents of will. It also appears that the said will not only contains the signature of the testator on it rather the area of the property bequeathed and contents about the execution of the said will and its correctness written by the testator on the margin of said will. The said aspect of the case eloquently indicates that the testator was in good health and mind at the time of execution of the said will. As had he not been in good mental condition and in good health he would have only put his signature on the document and he could not have written the other contents like area of the property bequeathed etc. Moreover, from perusal of the testimony of the Kamla Kant Singh who has been examined by the respondent no.1 as P.W.3, it appears that he has candidly stated that Sheo Barat Singh has executed the will in his favour in his good health and mind. Thus, the aforesaid aspect of the case indicates that the testator Sheo Barat Singh was in the state of good health & mind at the time of executing the will and executed



the said will.

10. Though there are three attesting witnesses of the will but it is not necessary to examine all the attesting witnesses of the will in proof of attestation of will. In my considered opinion, only one of the attesting witnesses of the will is sufficient to prove the attestation of the same and one of the attesting witness, namely, Shri Mistry has duly proved the attestation of the will as evident from his deposition recorded in the case and discussed by me in the earlier paragraph. From recital of the will it also appears that not only the testator bequeathed his property in question to the respondent no.1 but he has also made provision regarding living and earning etc. of his widow and daughters by purchasing land in village Makhraul and Sita Chak in favour of his widow Photo Devi which is sufficient to cater their need. Purchasing of aforesaid land by Sheo Barat Singh in favour of Photo Devi has not been denied by the appellant and respondent nos.2 to 5.

11. It is the admitted case of the appellant and respondent nos.2 to 5, as stated in their written statement, that respondent no.1 had obtained signature of the testator on plain paper in course of his treatment at the Ranchi hospital and might have converted the same into the will but from perusal of the will



it appears that writing of the said signature matches with other contents of the will written on the margin of the said will by the said testator. The said aspect of the case goes to belie the aforesaid case of appellant and respondent nos.2 to 5 while it goes to indicate that the testator has executed the said will in favour of respondent no.1 out of his good health and mind.

12. In the aforesaid facts and circumstances of the case, I find and hold that the will dated 04.05.1984 was executed by Sheo Barat Singh in favour of Kamla Kanat Singh in good health and mind and fully understanding its contents and is duly attested by the attesting witness and the same is genuine one.

13. Hence, the impugned judgment passed by the learned lower Court does not suffer with any illegality and impropriety and it does not warrant any interference of this Court. Hence, the said judgment is upheld and this appeal is accordingly dismissed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

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