

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.704 of 1998

Sahdeo Sah son of Late Ram Prasad Sah, R/o village- Kapuri, P.S.- Kateya,
District- Gopalganj.....Plaintiff/ Appellant

Versus

Draupadi Devi D/o Late Radha Sah, wife of Satan Sah, R/o village- Hata
Dhuria, P.S.- Swarahi, District- Padrauna
(U.P.).....Defendant/Respondent

Appearance :

For the Appellant/s : Mr. Yogendra Prasad Sinha
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 18-09-2017

The instant appeal has been preferred against the judgment and order dated 21.09.1998 passed by Sri Manohar Prasad the then 2nd Additional District Judge, Gopalganj in Probate Case No. 04 of 1994 / 01 of 1995 whereby and whereunder the Probate Case was dismissed with cost.

2. The aforesaid Probate Case was filed by the appellant-plaintiff for grant of probate to the last Will and testament alleged to be executed by Radha Sah, the younger brother of the appellant-plaintiff, on 15.03.1965, of village Kapuri, P.S.- Kateya, District- Gopalganj.

3. Briefly stated, the case of the plaintiff is that Ram Prasad Sah, the father of the plaintiff, had three sons. After the death of Ram Prasad Sah the three sons, namely, Bindeshwari Sah, Radha



Sah and Sahdeo Sah separated in mess and business. Radha Sah had only one daughter Draupadi Devi who is the respondent-defendant. She was married to Satan Sah of village Hata Dhuria, P.S.-Sawarahi, District- Padrauna (U.P.) who had substantial landed property and she was enjoying the married life there. The plaintiff used to look after Radha Sah, who after being satisfied with the services rendered to him by the plaintiff, Radha Sah executed a deed of Will on 15.03.1965 in favour of Sahdeo Sah. The Will was scribed by one Bachan Rai of village- Sakarpan, P.S.- Kateya, District- Gopalganj at the instance of Radha Sah, thereafter, the contents of the Will was read over to Radha Sah, he after understanding the contents of the deed put his L. T. I. thereon, that was witnessed by Gaya Sah and Lakhraj Sah of village- Kapuri. Radha Sah died on 15.10.1967 and after his death Sahdeo Sah came in possession of Schedule I properties and after the death of the wife of Radha Sah, Sahdeo Sah came in exclusive possession as Draupadi Devi was not interested in the said properties.

4. Draupadi Devi, the respondent-defendant, appeared in the suit and filed written statement challenging the genuineness of the deed of Will, which according to her, is a forged and fabricated document. The alleged deed of Will is highly suspicious document



inasmuch as the Probate Case has been filed after 27 years of the death of Radha Sah and also after the death of the alleged scribe and attesting witnesses. The writing of the entire deed of Will is fabrication as it was neither scribed by Bachan Rai nor witnesses Gaya Sah and Lakhraj Sah have signed over the same. It is wrong to say that the plaintiff performed the marriage of the defendant, as a matter of fact her marriage was performed by her grandfather. It is also false to say that after the death of Radha Sah, the plaintiff came in possession over the lands described in the deed of Will. As a matter of fact, the defendant along with her mother came in possession over those lands. She has also dealt with the property and sold part of the property to Anmol Sah. It is wrong to say that the defendant has substantive property in her sasural and she has no interest in the property of her father. As a matter of fact, the defendant is living in the house of her father.

5. On the basis of the pleadings of the parties, the following issues were framed by the learned trial court:-

(I) Is the Probate Case as framed is maintainable ?

(II) Is the plaintiff got valid cause of action and right to file Probate Case?

(III) Is the duty paid sufficient ?



(IV) Is deed of Will dated 15.03.1965 executed by Radha Sah a genuine document or forged, fabricated and bogus one ?

(V) Is the plaintiff entitled to grant of probate as prayed ?

(VI) To what relief or reliefs is the plaintiff entitled ?

6. Learned court below took up issue no. IV at first and came to the conclusion that the deed of Will is a forged and fabricated document and cannot be probated. Thereafter, issue No. III was taken and it has been held that the same was not pressed. Issue No. V and VI were taken and it was held that the plaintiff is not entitled to any relief. Issues No. I and II were also decided against the plaintiff holding that the Probate Case as framed is not maintainable and the plaintiff has got no valid cause of action and right to file Probate Case and accordingly, suit was dismissed with cost.

7. The plaintiff being aggrieved and dissatisfied with the said judgment and order filed this appeal challenging the legality, correctness and propriety of the same.

8. Learned counsel for the appellant arguing in this appeal has submitted that the finding of the learned court below is otherwise, bad in law as well as on facts. Probate Case has been dismissed on wrong appreciation of facts and law based upon surmises and conjectures. Learned court below has wrongly held



that the deed of Will is highly suspicious. It has wrongly been held that the plaintiff has got no valid cause of action and Probate Case of the plaintiff is not maintainable. It has also been wrongly held that the Will is forged and fabricated document and cannot be probated. Learned court below has erred in holding that putting thumb impression of the testator on the deed of Will creates it all the suspicious. Several witnesses have supported the case of the plaintiff, in spite of that the learned court below has held otherwise. The learned court below has wrongly relied upon the report of the hand writing expert and wrongly held that the signature of witness Lakhraj Sah on the deed of Will does not match from the admitted signature. Learned court below has erred in discussing the evidence of the plaintiff and wrongly not relied upon those testimonies. The learned court below has applied double standard. There is no valid reason not to rely upon the deed of Will and as such the judgment and order of the court below is fit to be set aside.

9. No one has appeared on behalf of the respondent and as such the appeal was heard ex-parte.

10. The only point for consideration is as to whether the deed of Will dated 15.03.1962 alleged to be executed by Radha Sah in



favour of Sahdeo Sah is a genuine document or forged and fabricated document.

FINDINGS:-

11. Point No. I:- Having considered the pleadings of the parties and evidences available on the record, in my opinion also, learned court below has rightly decided the issue no. IV in this regard. PW 4 Sahdeo Sah is the plaintiff, he has come to say that Ram Prasad Sah had three sons namely, Radha Sah, Bindeshwari Sah and Sahdeo Sah. After the death of Ram Prasad Sah, there was disruption in the family and Radha Sah and the plaintiff were reunited while Bindeshwari Sah remained separate. Radha Sah had only one daughter namely, Draupadi Devi whom he gave in marriage to Sattan Sah. Radha Sah executed the deed of Will on 15.03.1965 and on his instruction the Will was scribed by Bachan Rai and was witnessed by Lakhraj Sah and Gaya Sah. Radha Sah died on 15.10.1967, the wife of Radha Sah died two years ago. The scribe and witnesses have also died. He has denied that he has prepared a forged, fabricated and ante-dated deed of Will after forging the writing and signature of dead person. During cross-examination, in paragraph 11, he has stated that the testator was aged about 70 years, it was the month of Chait and Baishakh. He has further stated that Radha Sah was literate and was capable of



putting his signature. Significantly, on the deed of Will there is L. T.I. which has been identified by Bachan Rai, the scribe, no explanation was given as to why he did not put his signature in addition to L.T.I. and as to why his L.T.I. was identified by the scribe. PW 1 Mahatam Sah claims himself to be the maternal uncle of the defendant but in examination-in-chief itself he said that Radha Sah died issueless and this statement is against the admitted case of the parties that the defendant is the daughter of Radha Sah and this falsifies his entire evidence. He is unable to say as to what document was executed in his presence. He does not remember as to whether Radha Sah has put his L.T.I. or signed on the document. In paragraph 7 he says that it was executed in the month of Ashadh and Shavan while the deed of Will is of March, 1965 and as such this witness is not reliable. PW 2 Chandrika Thakur is of village Tetariya. He has come to say that he has got knowledge about the deed of Will, he further states that funeral of Radha Sah and his wife was performed by the plaintiff. In paragraph 7 of his cross-examination he says that wife of Radha Sah died two years after the death of Radha Sah. According to admitted case of the party, Radha Sah died in the year 1967 while his wife died in the year 1993-94.



Thus, this witness being outsider has got no knowledge and he is a got up witness.

12. PW 3 Ram Narain Dubey is of Bathua Bazar. He is a chance witness and claims to be present at the time of execution as he has gone to Radha Sah to purchase Turmeric. He says that the Will was scribed by Bachan Rai and signed by witness Lakhraj Sah and Gaya Sah. He says that it was executed at about 4:00 p.m. while PW 1 has stated in paragraph 8 that it was executed at 11:00 a.m. He further states that he cannot say as to whether Gaya Sah and Lakhraj Sah were younger or old. He further states that there was some dispute between Radha Sah and the plaintiff which was settled by the document. Thus, this witness is not reliable and no reliance can be placed upon his evidence. Ext. A is the report of the expert who compared the signature of attesting witness Lakhraj Sah on Ext. 1, the deed of Will, and his admitted signature on the deed of mortgage dated 14.05.1976 marked Ext. B and it was found by the expert to be of different person. He says that the signature of attesting witness Lakhraj Sah was forged. The expert is PW 7 and he has proved his report. PW 8 has proved Ext. B.

13. DW 1 is of village Kapuri. DW 2 Tilak Sah has also substantiated that the defendant came in possession over the property of Radha Sah after his death and that Radha Sah never



executed the deed of Will in favour of plaintiff. DW 3 Banka Baitha is a washer-man of Radha Sah. He has also stated that the defendant came in possession over the property after the death of Radha Sah. DW 5 Draupadi Devi has denied the case of the plaintiff and she has stated that she came in possession of the property of her father after his death. The deed of Will was alleged to be executed on 15.03.1965 while this Probate Case has been filed on 11.08.1994 after lapse of more than 29 years. The plaintiff waited the death of alleged scribe and alleged witnesses. Filing of Probate Case after such a long time creates some suspicion. Greater the delay greater the suspicion arises and for that no explanation was given by the plaintiff either in his petition for probate or in his evidence. It is not believable that the testator will execute the deed of Will by ignoring his wife and daughter without making any provision for them. The plaintiff has himself admitted that Radha Sah was a literate person and was capable of signing an instrument, the absence of signature of Radha Sah on the deed of Will makes it all more suspicious, not a single witness from village Kapuri has come to support the case of the plaintiff whereas the witnesses produced on behalf of the defendant are from village Kapuri.



14. Thus, it is manifest that the plaintiff has created forged document and has tried to substantiate it on the strength of got up witnesses. Hand writing expert DW 7 has proved that the signature of attesting witness Lakhraj Sah on the deed of Will does not match with his admitted signature on the deed of mortgage (Ext. B) and this cuts the roots of the case of the plaintiff. Accordingly, it is held that the deed of Will is a forged and fabricated document and the learned court below has rightly refused to grant Probate. In the result, this point is decided against the appellant and in favour of the respondent.

15. Accordingly, this appeal is hereby dismissed and as the respondent has not appeared, so without cost.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
CAV DATE	08/09/2017
Uploading Date	18/09/2017
Transmission Date	18/09/2017

