

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.64 of 1998

- =====
1. (a) Gayatri Thakur wife of Hare Ram Thakur, D/o Late Choudhary Krishna Rai and Smt. Vidyawati Devi, R/o village-Bisi, P.S. 7 District- Buxar
 - (b) Sawitri Devi wife of Chanda Rai and D/o late Choudhary Krishna Rai and Smt. Vidyawati Devi, R/o village-Dumraongarh per, P.S.- Dumraon, District- Buxar
 2. Chowdhary Ravindra Kumar @ Choudhary Ravindra Kumar Rai
 3. Chowdhary Sheo Shankar Rai
- Both sons of Chowdhary Sri Krishna Rai
All residents of village – Dumraon, P.S.- Dumraon, District- Bhojpur, at present Residing at mohalla- Mahendru, P.S.- Sultanganj, P.O.- Mahendru, District- Patna

.... Appellants

Versus

1. Beena Shahi
 2. Meena Shahi
- Both daughters of Late Ram Sundar Shahi, R/o 12530 Hunting brook Houston, T.X. 77099, U.S.A.
3. Manoj Kumar Shahi, son of Late Ram Sundar Shahi, R/o 12530 hunting Brock Houston T.X. 77099, U.S.A., at present residing at with the Chief Engineer, Sri G.P. Shahi, Circuit house Tata Nagar, Jamshedpur,

.... Respondents

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Appearance :

For the Appellants : Mr. ANIL KUMAR SINGH I

For the Respondents : Mr. S.S.P.YADAV

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
C.A.V. JUDGMENT
Date: 24-08-2017

The instant appeal has been preferred against the judgment passed by Smt. Shakuntla Sinha the then Ist Additional District Judge, Patna dated 07.01.1998 passed in Revocation Case no. 76 of 1986 whereby and whereunder the Revocation Case was dismissed.



2. The Revocation application has been filed by the daughter of the Testator Jagdeo Prasad Shahi and her sons for revocation of letters of administration granted to late Ram Rati Devi the widow of late Jagdeo Prasad Shahi under order dated 20.08.82 passed in Probate/Letters of Administration Case no. 149 of 1976. As per the petitioners, they had no knowledge of the Probate/Letters of Administration Proceeding and no citation was served upon them. They had also no knowledge of any Will or Codicil prior to 07.04.1986, when opposite parties no. 2 to 4 filed their written statement in Partition Suit No. 35 of 1986 filed by petitioner no. 1 in the court of Sub-Judge Ist, Patna against opposite party no. 1 to 4 with regard to the properties of her father. Thereafter, the petitioners get the record of Letters of Administration inspected on 29.04.86 and learnt about the frauds played upon them. They were neither served with any citation nor they could have nay knowledge of the case. At that time petitioners no. 3 and 4 were minors but they were not shown minors and false and collusive service report was obtained that they refused to accept the citation. At that time none of the petitioners were living in Patna at Mohalla Mahendru. They were living at that time at village Dumraon and no citation was sent there. According to the petitioners, collusive report was obtained to conceal the probate matter and



knowledge of alleged Will and Codicil from the petitioners. Late Jagdeo Prasad Shahi, the alleged executant of the Will and Codicil, was aged about 80 years in the year 1971 and at that time he was physically and mentally weak to understand the nature and contents of any deed. The said Will and Codicil are forged and fabricated documents which were not executed by late Jagdeo Prasad Shahi. These were neither drawn on his instructions nor were attested by him and he also did not execute those documents voluntarily. Late Ram Sundar Shahi, the only son of late Jagdeo Prasad Shahi, had settled in the United States of America and his father-in-law Rudeshwar Prasad Singh under whose influence Ram Sundar Shahi started creating things to grab the house of late Jagdeo Prasad Shahi. He and the nephew of Ram Sundar Shahi had fabricated the alleged Will and Codicil to deprive petitioner no. 1, the daughter of late Jagdeo Prasad Shahi, from her legitimate half share from the properties of her father. According to the petitioners, the Will and Codicil do not bear the writing, signature and thumb impression of alleged Testator Jagdeo Prasad Shahi. The letters of administration issued to Ramrati Devi, the widow of late Jagdeo Prasad Shahi, has become useless and inoperative on her death. Late Ramrati Devi to whom letters of administration was issued did not comply with the directions



of the court contained in the last part of the order dated 20.08.1982 regarding exhibition of inventory and submissions of accounts.

3. Objection was filed on behalf of the widow daughters and son of late Ram Sundar Shahi, the only son of Testator late Jagdeo Prasad Shahi. According to them, the application of revocation is malafide and not maintainable. All the applicants were duly cited in the application for the probate/letters of administration but they deliberately refused to accept the notices and later on being instigated by enemies of the opposite party they filed a suit for partition with full knowledge that late Jagdeo Prasad Shahi had executed a Will and Codicil in favour of his son late Ram Sundar Shahi and grandson Manoj Shahi. Chaudhary Sri Krishna Rai, the husband of applicant no. 1 Vidyawati Devi and father of applicants no. 2 to 4, was in service at Patna in C.I.D. department as Inspector of Police and on his request he was allowed to live in their house bearing holding no. 253. Petitioners were also living in the same house as they had no house in Patna, they were allowed to live in the aforesaid house. During life time of her mother, Vidyawati Devi did not raise any objection to the Will and Codicil executed by late Jagdeo Prasad Shahi in favour of his son and grandson but just after the death of her mother, Vidyawati Devi filed a suit



for partition at the instance of her husband who is a retired Police Officer and highly greedy man. According to the opposite parties, the Will and Codicil in question are unimpeachable documents, the Testator was an educated man and had retired as Bench Clerk of the Commissioner of Patna Division. Vidyawati Devi was married in a very well to do family and at the time of marriage huge expenses were done. Her husband was also a government servant. Under the circumstances, late Jagdeo Prasad Shahi willingly and deliberately executed the Will and Codicil in favour of his only son and only grandson and his wife to be maintained for life. He got the Will registered by himself presenting the same before the Registrar. Ram Sundar Shahi who is settled in America also died after the death of his father leaving behind his widow, two daughters and one son. After the death of Jagdeo Prasad Shahi the application for Probate was filed in due course and after observance of all the procedures of law and formalities. No objection was filed from any corner and the letters of administration was granted to Ram Rati Devi, the widow of Testator late Jagdeo Prasad Shahi, because after filing of Probate Ram Sundar Shahi also died. With the consent of the opposite parties letters of administration was granted to Ramrati Devi, the widow of late Jagdeo Prasad Shahi, and that was within the knowledge of the applicants.



The applicant no. 1 was knowing everything. The applicant had knowledge of filing of Probate Case and also grant of letters of administration because both the parties were living in the same house and has frequent talks of the said case of Probate/letters of administration. Further petitioners no. 3 to 4 were not minor at the relevant time and there is unimpeachable records written by Jagdeo Prasad Shahi to show the time and date of their birth. The report of process server for service of citation was correct and at the time of service all the petitioners were living in Patna at mohalla Mahendru not at village Dumraon. No fraud was committed with respect to the Will and Codicil in question. At the time of execution of those documents Testator Jagdeo Prasad Shahi was quite fit both mentally and physically and both the documents were duly attested by very respectable persons of Patna and both the documents bear writings, signature and L.T.I. of Testator Jagdeo Prasad Shahi.

4. Both the parties have examined oral witnesses and have also filed documentary evidences in support of their contentions. On behalf of the petitioners/applicants four witnesses have been examined. AW 1 is Chaudhary Kaushal Kishore Rai. He is the nephew of the husband of petitioner no. 1 Vidyawati Devi. AW 2 Chaudhary Murli Manohar Rai is petitioner no. 3 and son of Vidyawati Devi. AW 3 Kishun Lal is



a betel shopkeeper of Mahendru Mohall. He has come to say that Vidyawati Devi always resided in her in-laws house at Dumraon and AW 4 is Vidyawati Devi herself. Two entries made in the diary written by late Jagdeo Prasad Shahi have been proved and those entries are Ext. 1 and 1/A. These exhibits are related with the date of birth of late Jagdeo Prasad Shahi and his son Ram Sundar Shahi. This entire diary has been produced and proved on behalf of the opposite parties also. Certified copies of the service report of citations sent to the petitioners have also been adduced on behalf of the petitioners and those have been marked as Ext. 2 and 2/B.

5. On behalf of the opposite parties, eight witnesses have been examined. OPW 1 is Upendra Kumar process server. He served the notice upon the petitioners in Probate Case No. 150 of 1976. He has proved the service report which has been marked as Ext. B to B/2. OPW 2 is Bindeshwari Singh. He has been examined on the point of execution of the Will by late Jagdeo Prasad Shahi and also on the point of probate case filed by his son. He was the Advocate's clerk of Advocate Brijnandan Prasad, he proved the signatures of Ram Sundar Shahi on the aforesaid Vakalatnama filed in the Probate Case, he used to do pairvy in that probate case, he has also said about the service of



notice upon the petitioners by OPW 1. He has said that the notice of Vidyawati Devi was sent inside her house by the process server through the maid-servant but she refused to accept the notice. OPW 1 also said this fact. This witness has proved his signature as identifier over the service report which has been marked as Ext. D/1, the signature of other witnesses over the service reports are Ext. D and D/2. OPW 3 is Md. Halim. He is the tenant in the house of late Jagdeo Prasad Shahi at Mohalla Mahendru where the notices of probate case were sent to be served upon the petitioners. He has said that the petitioners were residing in the house of late Jagdeo Prasad Shahi situated at mohalla Mahendru where he is running his saloon. He has also said about the service of the notices over the petitioners by the process server and refusal of the same by them. OPW 4 is Sitaram Mishra. He was the Purohit in the family of late Jagdeo Prasad Shahi. He has further stated that Vidyawati Devi, her children and her husband were residing in the house of her father at Mohalla Mahendru. He has also said about the service of notice by the process server on the petitioners and about the refusal by them. OPW 5 is Shardanand Prasad Sinha. He has also said about the service of notice of the probate case on the petitioners by process server and refusal of the same by them. OPW 6 Bindeshwari Prasad Singh



Chaudhary is a witness of the Will executed by late Jagdeo Prasad Shahi in the name of his wife late Ramrati Devi and son late Ram Sundar Shahi. He has also said that the Will was typed by late Jagdeo Prasad Shahi himself and was signed by him on every page. He has proved his signature and signature of other witnesses on the Will. The entire Will has been marked as Ext. F and the entire Codicil has been marked as Ext. G. The entire entry of the diary has been marked Ext. H on behalf of the opposite parties. Ext. B/3 is certified copy of Ext. B the service report because it is torn. OPW 7 is Deota Prasad Singh Chaudhary. He is an Advocate at Patna and was the Chairman of Collector Bar Association at the relevant time. He was also appointed as Mayor of Patna Municipal Corporation twice. He was relative of late Jagdeo Prasad Shahi and he is the witness of Will and Codicil both. He has said that on 14.09.1971 late Jagdeo Prasad Shahi has typed the Will executed by him in favour of his wife and son late Ram Sundar Shahi and signed over every page of the Will in his presence and then he and other witnesses have also signed over the Will. He has said that at the time of execution of the Will Late Jagdeo Prasad Shahi was quite fit both physically and mentally. He has further said that on Ist November, 1971 late Jagdeo Prasad Shahi himself typed the Codicil and signed over the every page of the same in his



presence and then he and all the witnesses signed over the same. He has said that this Codicil was executed by late Jagdeo Prasad Shahi in favour of his only grandson who is the son of late Ram Sundar Shahi. OPW 8 Manoj Kumar Shhai. He is O. P. No. 4 and son of Ram Sundar Shahi and grandson of late Jagdeo Prasad Shahi in whose favour the codicil was executed by late Jagdeo Prasad Shahi. He has also said that his grandfather was healthy both mentally and physically at the time of execution of Will and Codicil both. He has said that his father had gone to USA in the year 1970 and had stayed there but he remained along with his grandfather and studied here and he said that his father remained in U.S.A. since 1970 till his death in the year 1978. He has also said that his grandfather had bequeathed his both the houses in favour of his son Ram Sundar Shahi but further he thought to give one house to him so he prepared the Codicil in his favour and at that time he was only aged about 10 years.

6. Learned counsel for the appellants arguing in this appeal has stated that it is an admitted fact that no notice was sent through registered post and only the notices were sent through process server under ordinary process. When the notices were alleged to be refused by the petitioners then the notices ought to have been served through registered



post. At the time of service of notice the petitioners were not residing in mohalla Mahendru and no notice was sent on their residence at village Dumraon and as such non-service of citation of the Probate/Letters of Administration case on the petitioners is sufficient enough to allow the revocation case. But the learned court below has erred in not allowing the revocation case. Further the Will and Codicil are forged and fabricated documents which were not executed by late Jagdeo Prasad Shahi and those were neither drafted at his instruction nor he got them attested and he also did not execute them voluntarily because being an old person he was not physically and mentally sound to understand the nature of the documents. The witnesses examined on behalf of the petitioners-appellants are consistent whereas the witnesses examined on behalf of the opposite parties-respondents are not consistent on every point. The witnesses of opposite parties are not reliable and as such the revocation case filed by the petitioners-appellants was fit to be allowed. The learned court below has committed error in discussing and mentioning the evidence available on the record, resulting, he has come to a wrong findings. The impugned order is not maintainable and is fit to be set aside.

7. On the other hand learned counsel for Opposite parties-respondents arguing in this appeal has submitted that



the judgment and order passed in Revocation Case No. 76 of 86 is fit to be confirmed. Learned court below has touched every point and has rightly decided the same. The revocation case was also barred by law of limitation. Letters of Administration was granted on 20.08.1982 and the revocation was filed on 03.05.1986. In Article 137 of the Limitation Act three years is prescribed but here within three years revocation case was not filed. The petitioners were residing in the same house at mohalla Mahendru and they were aware regarding every affairs going on in Probate Case but they intentionally did not receive the notice and refused the same and further during the life time of the mother, Vidyawati Devi, never made any objection and after her death she filed partition suit, thereafter, filed this revocation case. Learned counsel for the respondents has relied upon a judgment reported in **AIR 2001 Bombay 461** in the case of **Ramesh Nivrutti Bhagwat, petitioner v. Dr. Surendra manohar Parakhe, Respondent**. It has been argued that the application for revocation of grant is barred by Article 137 of the Limitation Act, 1963 which requires the application to be filed within 3 years from the date when right to apply accrues and as such revocation case is hopelessly barred by time. Learned counsel has further relied upon the judgment reported in **AIR 1955 Supreme Court Page 566**



(paragraph 16) in the case of **Anil Behari Ghosh, Appellant v. Smt. Latika Bala Dassi and others, Respondents** and argued that the motion to issue citation to persons who should have been apprised of the probate proceedings may well be in a normal case a ground by itself for revocation of the grant but this is not an absolute right irrespective of either consideration arising from the proved facts of a case. The law has vested a judicial discretion in the court to revoke a grant where the court may have prima facie reasons to believe that it was necessary to have the Will proved afresh in the presence of interested parties but in the present case we are not satisfied in all the circumstances of the case that just cause within the meaning of Section 263. The ground taken by the appellants that they came to know about the Will first time in the written statement filed in Partition Suit has no ground for revocation. In this case proper citation was issued to the petitioners, no fraud had been played in obtaining the grant and no facts have been suppressed in order to mislead anybody. It has been argued that mere omission to issue citation cannot be an absolute ground for revoking the grant and for that reliance has been placed on a judgment reported in **AIR 1964 Patna page 270** (paragraph 2) in the matter of **Kanhaiya Missir and others, Appellants v. Dinanant Missir, Respondent**. It



has further been argued that if the court on the evidence before it, comes to the conclusion that the Will was duly executed has not been revoked, the Court would not revoke the grant and for that reliance has been placed upon a judgment reported in **AIR 1953 Calcutta 103 (Vol. 40, C. N. 33)** (para 18 and 19) in the matter of **Sm. Latikabala Dasi, Appellant v. Anil behari Ghose, Respondent**. Further it has been argued that attesting witness stated that Will was read over to Testator and then he put thumb impression on it, his statement is corroborated by another witness, absence of any suspicious circumstances held the Will was a genuine document and it was not obtained by playing fraud or undue influence, probate could not be revoked and for that reliance has been placed on a judgment reported in **AIR 1982 Calcutta 374** (paragraph 14 and 15) in the matter of **Bibhuti Bhusan Mayur, Appellant V. Bhabesh Bhusan Mayur and ot hers, Respondents**.

8. The point for consideration in this appeal is: (i) as to whether the Will and Codicil are forged and fabricated document and were not executed by late Jagdeo Prasad Shahi and (ii) Whether the citation was served upon the petitioners in the Probate/letters of Administration Case.

9. FINDINGS:- Point No. (ii) :- Learned counsel for the appellants has submitted that on the ground of non-



service of the citation itself the letters of administration granted should be revoked because the address of the petitioners given in the application in Letters of Administration is of Dumraon but admittedly, notices were not sent to village Dumraon. After perusal of the application for Letters of Administration, it is found that the address of the petitioners was given as mohalla Mahendru, Post-Mahendru, District- Patna and in Ext. B to B/2 the address given is the same mohalla Mahendru, District- Patna. Further it has been stated that the service report goes to show that the petitioner refused to receive the notice, therefore, according to Order 5 Rule 9A of the C.P.C. the notice should have been sent through registered post but that has not been done. There is no affidavit of the peon to prove the service and service of refusal is no service at all and as such the Rules are violated and this is a legal malice. It has further been stated that when major sons of Vidyawati Devi were present then what was the necessity to send the notices through maid servant to serve upon Vidyawati Devi inside the house. During evidence it has come that Vidyawati Devi and her sons were not residing in the house at mohalla Mahendru, at the relevant time, hence the notice could not have been served upon them and the service report is wrong and false and that is at the instance of the petitioners of



Probate/Letters of Administration Case.

10. On behalf of the respondents it is submitted that Letters of Administration Case was not contested, hence, it could not have been treated as a title suit and as such it was not essential to observe all the technicalities laid down under Order 5 of the C.P.C. The only thing which was required was to give notice to the relatives of the Testator to bring to their knowledge about the Letters of Administration Case. Admittedly, the petitioner no. 1 was the loving daughter of late Jagdeo Prasad Shahi and at that time her mother was alive. The Probate Case earlier was filed by late Ram Sundar Shahi but after his death Ramrati Devi, the mother of petitioner no. 1, was substituted and with the consent of all, Letters of Administration was granted in her favour. There is no evidence and further no case of the petitioners that Ramrati Devi the mother of petitioner no. 1 was hostile to her and had no love for petitioner no. 1 and as such being the position, there was no reason for Ramrati Devi, the mother of petitioner no. 1, to conceal the Will and Codicil from petitioner no. 1 and to conceal the Probate/Letters of Administration Case from her. The petitioners though have denied their residence in mohalla Mahendru but they could not prove the residence at the relevant time in Pathar ke Masjid as stated by them. Further they also could not prove



that they were residing at the relevant time at Dumraon. Admittedly, the husband of the petitioner no. 1 was Inspector in CID Department and was posted at Patna and remained at Patna since the date of his appointment till the retirement. The petitioner no. 1 was the only daughter of late Jagdeo Prasad Shahi and admittedly, he had love and affection for her, therefore, when the petitioners were residing, according to them itself, in the house of late Jagdeo Prasad Shahi at mohalla Mahendru since 1982 what should be the reason for them not to reside in the said house prior to that. Admittedly, the address given in the ration card of the petitioners is of Mohalla Mahendru and the address given in the school certificates of petitioners no. 2 to 4 as deposed by Vidyawati Devi AW 4 is of mohalla Mahendru. This fact proves that the petitioners were residing in the house of late Jagdeo Prasad Shahi where they are residing at present at mohalla Mahendru. Notices were sent to the petitioners, therefore, it cannot be said that the petitioners of Letters of Administration Case had willfully concealed the filing of the case from the petitioners. It was not a title suit, hence, it was not essential to send the registered notice to them. Being satisfied with the service of notice, the court had granted Letters of Administration in favour of none but the mother of petitioner no. 1. Therefore, it cannot be said that



the petitioners and mostly petitioner no. 1 has no knowledge of Will or Codicil or Probate/Letters of Administration Case. Witnesses who are not related or interested from either side have said about the service of notice upon the petitioners by the process server, therefore, there can be no doubt in the service of notice upon the petitioners. In letters of Administration Case the petitioners have not appeared and as such the same would not be converted into the Title Suit and therefore, on the technical ground that the notice was not sent through a registered post, the letters of Administration granted cannot be revoked. From the evidences available on the record, it is proved that the notices were served upon the petitioners and the petitioners have knowledge of Letters of Administration Case, further I find that the petitioners were residing in the house of late Jagdeo Prasad Shahi mohalla Mahendru where late Jagdeo Prasad Shahi was also residing during his life time and his widow also lives in the same house and this shows that the petitioners had all knowledge of Letters of Administration Case in question. Thus, the point no. (ii) is decided against the appellant and in favour of the respondent and it is held that the notices were validly served on the petitioners in Probate /Letters of Administration Case and the service report of the process server is genuine.



11. Point No. (i) :- According to the appellants, the Will and Codicil are fabricated documents. PW 4 who is petitioner no. 1 has stated that her father was too old and was not physically and mentally sound at the time of the execution of alleged Will and Codicil, therefore, according to her, the Will and Codicil are not genuine. Though she was loving daughter of her father and he could not have excluded her from his properties. On the point of Will and Codicil, on behalf of opposite parties several witnesses have been examined who are most respectable persons. OPW 6, who is a witness of the Will, has said that the Will was typed by late Jagdeo Prasad Shahi himself in his presence and it was signed by him on every page and then he (OPW 6) also signed over the Will as a witness. He has said that other witnesses Brij Nandan Prasad Singh, Ram Padarath Prasad Singh, D.P.S. Chaudhary had also signed over the Will as a witness on 14.09.1971 itself. Vidyawati Devi is the daughter of Testator late Jagdeo Prasad Shahi and she was married in a very well to do family and her husband was in service in CID Department. He has said that she was living in her father's house at mohalla Mahendru. This witness is neither related nor interested from any side and as such he is a reliable witness. He has also said that late Jagdeo Prasad Shahi was healthy and quite fit and he never fell ill. OPW 7,



D.P.S. Chaudhary, is the Advocate of Patna and he was the Mayor of Patna Municipal Corporation and as such he was a man of repute and in relationship he was nephew of late Jagdeo Prasad Shahi. There is nothing on the record to show that he was hostile to the petitioners. He has also said that late Jagdeo Prasad Shahi himself typed the Will and Codicil and had signed over every page of both the documents in his presence and then he and other witnesses who were Bisheshwar Prasad Singh Chaudhary, late Brijnandan Prasad Singh Chaudhary and Advocate late Ram Padarat Prasad Singh also signed over the same as witnesses. He said that in the year 1975 late Jagdeo Prasad Shahi died due to brain hemorrhage, therefore, it is clear from the statement of all the witnesses including the petitioners that Testator Jagdeo Prasad Shahi was alive till 1975 and the Will and Codicil were executed in the year 1971 itself i.e. four years ago from his death, both the documents are registered one and in the document the reason for not giving any house to petitioner no. 1 is given and that reason is that she was married in a well to do family and her husband was in government service. It is clear from both the documents that Testator Jagdeo Prasad Shahi was having two houses only as his property and both the houses were constructed by him out of his own income, hence, he has reason to execute the Will



with regard to one house in favour of his son and one house in favour of his grandson. Provision was made for his widow also in the documents till her life time. No circumstances has been revealed to show any suspicious circumstances behind the execution of the deed. The deeds were registered one, testator was educated person and his signatures over the deeds had not been challenged and it has not been proved that he was not mentally sound at the relevant time and was influenced by anyone and as such the deeds are found genuine. Moreover, at the time of the execution of the documents, testator's son Ram Sundar Shahi, in whose favour Will was executed, was residing in U.S.A. and grandson Manoj Kumar Shahi was only 10 years old, these facts also show that none was there to influence the testator for executing the Will and Codicil. On behalf of the appellant no ruling has been cited whereas on behalf of the respondents rulings have been cited and rulings are helpful. The Will and Codicil in question have been executed by late Jagdeo Prasad Shahi out of his own sweet will without any influence and at that time he was physically and mentally sound. The judgment passed by the Ist Additional District Judge, Patna is quite legal, proper and correct and it needs no interference of this Court. In the present case, no circumstances is found suspicious. In the result, point no. (i)



is decided in favour of the respondents and against the appellants.

12. Accordingly, finding no merit in this appeal the same is hereby dismissed but under the circumstances without any cost.

(Jitendra Mohan Sharma, J)

avin/-

AFR/NAFR	NAFR
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