

IN THE HIGH COURT OF JUDICATURE AT PATNA
Test Case No.11 of 2011

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In the goods of Late Tunni Jha, wife of Late Chetakar Jha, R/o Ashram 51 (A)/C Sri Krishnapuri, P.S.- Sri Krishnapuri, District + Town- Patna

AND

In the matter of an application under Sections 273, 276 and 300 of the Indian Succession Act for grant of Probate of the Will dated 18.06.2008

AND

In the matter of Shipra Jha, aged about 59 years, wife of Late Dr. Prabhakar Jha, R/o Ashram 51 (A)/C, Sri Krishnapuri, P.S.- Sri Krishnapuri, District + Town- Patna, presently residing at 3408 Edward Street N.E. Minnaea Police M E 5548 U.S.A.....Applicant

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Appearance :

For the Applicant : Mr. Dharendra Narain Mallik, Advocate
Mr. Kumar Ravi Shanker, Advocate
Mrs. Pushpa Rani, Advocate
Mrs. Punam Kumari
Mr. Madhura Nand Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 06-04-2018

This testamentary case has been filed by the applicant Shipra Jha for grant of Probate of the Will dated 18.06.2008 executed by the Testatrix Late Tunni Jha wife of Late Dr. Chetkar Jha for disposition of the properties standing in her name after her demise.

2. The Testatrix was a Hindu governed by Mitakshara School of Hindu Law.

3. The Testatrix died on 20.06.2011 at her residence (Ashram 51, (A)/c Sri Krishnapuri, P.S.- Sri Krishnapuri, District and Town Patna) leaving behind this Will to take effect after her death.



4. The Testatrix Tunni Jha was absolute owner of the properties mentioned in the Will. She has bequeathed her property situated at Mohalla Sri Krishnapuri in the town and district of Patna and her village Sarsopahi in the district of Darbhanga in favour of her daughter-in-law Shipra Jha and nephew of her husband Mr. Ramesh Jha. The Will was dully executed in presence of three attesting witnesses namely, Satish Chandra Jha, Advocate, Chhabi Jha, and Professor Sati Jha. The valuation of the properties covered under the Will has been declared by the applicant as Rs. 55,00,000/-. The applicant has been mentioned as one of the executors of the Will.

5. At the time of execution of the Will dated 18.06.2008, the said Tunni Jha was in good state of health, state of sound mind and she voluntarily executed the said Will fully understanding its contents without any undue influence of anybody in presence of following attesting witnesses: (i) Satish Chandra Jha, Advocate, Patna High Court so of Late Shyama Kant Jha, R/o Mala Niwas, Mohanpur, Punaichak, Patna, (ii) Prof. Sati Jha wife of Late Col. Mayanath Jha, R/o mohalla- Matrisadan, Kathalbari, Darbhanga, P.S.- L.N.M.U, Darbhagna, District- Darbhanga, (iii) Chhabi Jha, wife of Shri Bhognath Jha, R/o mohalla- Matrisadan Kathalbari, Darbhanga, P.S.- L.N.M.U., Darbhagna, District- Darbhanga. The said Will was her last Will for her property to take effect after her death. The Testatrix left behind her the following near relatives other than the applicant:



(i) Chhabi Jha wife of Shri Bhognath Jha, R/o mohalla-
Matrisadan Kathalbari, Darbhanga, P.S.- L.N.M.U., Darbhanga,
District- Darbhanga.....Daughter

(ii) Prof. Sati Jha wife of Late Col. Mayanath Jha, R/o
mohalla- Matrisadan, Kathalbari, Darbhanga, P.S.- L.N.M.U.,
Darbhanga, District- Darbhanga.....Daughter

(iii) Ramesh Jha son of Prof. Achutakar Jha, R/o vilalge-
Sarsopahi, P.S.- Manigachi, District- Darbhanga.....Nephew of Dr.
Chetkar Jha the husband of Testatrix.

6. Chhabi Jha and Professor Sati Jha the daughters of the
Testatrix live in their house given by their father Dr. Chetkar Jha
through Will and both are well off and are leading happy life. The
husband of Testatrix Dr. Chetkar Jha died on 2nd July, 2004 and her only
son Dr. Prabhakar Jha died on 24th April, 2007. Under the Will the
house and land situated at Mohalla Sri Krishnapuri under the town of
Patna has been bequeathed to the applicant and land with house of
village Sarsopahi, P.S. Manigachhi, District- Darbhanga has been
bequeathed to Ramesh Jha.

7. After institution of the case general citations have been
published in two local newspapers which was accepted vide order dated
24.04.2014. Special citation on near relative no. 3 was also issued
through registered cover. Near relatives 1, 2 and 3 appeared and filed
their Vakalatnama but did not raise any objection for grant of Probate of
the Will in favour of the applicant. In response of general citation no



one appeared to object the Probate of the Will executed by the Testatrix, hence, this case remained uncontested till the end.

8. In support of the case, the applicant examined three witnesses, namely, Chhabi Jha, one of the attesting witness of the Will as AW 1, Shipra Jha the applicant herself as AW 2 and Sati Jha one of the attesting witness of the Will as AW 3. During evidence entire original Will was marked as Ext. 1, signature of Testatrix Tunni Jha on all the four pages of the Will marked as Ext. 2, 2/1, 2/2 and 2/3, signature of Chhabi Jha has been marked as Ext. 3, signature of Sati Jha has been marked as Ext. 4.

9. During cross-examination both the attesting witnesses, namely, Chhabi Jha and Sati Jha have proved the attestation in terms of Section 63 of the Indian Succession Act, 1955 and Section 68 of the Indian Evidence Act. Both the attesting witnesses have deposed before the Court that the Testatrix Tunni Jha voluntarily executed the Will in sound state of body and mind on 18.06.2008 in presence of Satish Chandra Jha, Advocate, Patna High Court without any pressure or coercion from outside. AW 2 Shipra Jha is the applicant herself. She has stated that the Will dated 18.06.2008 was duly executed by said Tunni Jha, she was in good state of health, sound mind and she voluntarily executed the same without any pressure of any side. She has called Satish Chandra Jha, Advocate of Patna High Court to her Patna residence where she told Satish Chandra Jha about the execution of her Will, she also called her two married daughters Chhabi Jha and



Professor Sati Jha at the time of execution of the Will. In the morning of 18.06.2008 she called the Typist Manoj Kumar Mishra and told him to print her wishes in presence of three attesting witnesses. Typist Manoj Kumar Mishra printed the wishes of late Tunni Jha and after understanding the contents she appended her signatures on all the four pages. The three attesting witnesses also appended their signatures on the last page of the Will. At the time of execution of the Will, this witness was not present at Patna and was residing in U.S.A at that time. This witness stated that late Tunni Jha bequeathed her Patna residential property to her and her village property to one Ramesh Jha the nephew of her husband and this Will is the last Will of Testatrix Late Tunni Jha. After more than three years of execution of Will the Testatrix died at her residence at Patna on 20.06.2011.

10. In view of the aforesaid facts and going through the original record of the case, this Court is satisfied that the Testatrix Tunni Jha had executed the Will dated 18.06.2008 after understanding the contents mentioned therein in sound state of body and mind without any external pressure or coercion or misrepresentation. This Court finds no difficulty in accepting the case of the applicant which has been proved beyond reasonable doubt. This Court also holds that Ext. 1 is the last Will and testament of Testatrix Late Tunni Jha.

11. Accordingly, this application is allowed. Let the Probate of the Will dated 18.06.2008 be issued in favour of the applicant of this



case with a copy of the Will annexed thereof which shall have effect throughout the territory of India.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
CAV DATE	23.03.2018
Uploading Date	06.04.2018
Transmission Date	06.04.2018

