

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.41 of 2002

1. Paremeshwar Singh son of Jamuna Singh
2. Rajkalo Kuar wife of Bikram Singh
both R/o village- Bharhorpur, P.S.- Ekma, District- Saran

... .. Appellants

Versus

1. (a) Fulpari Kuer wife of Late Shankar Singh
(b) Kameshwar Prasad Singh
(c) Akhilesh Kumar Singh
(d) Bimlesh Kumar Singh
(e) Mithilesh Kumar Singh
(f) Manju Devi
all sons and daughter of Late Shankar Singh, R/o vilalge- Bharhopur, Tole
Khoorga, P.O.- Bharhopur, P.S.-Ekma, district- Saran

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Shashi Shekhar Dwivedi, Sr. Advocate Mr. Nagendra Rai, Advocate Mr. Navin Nikunj, Advocate
For the Respondent/s	:	Mr. Kamal Nayan Choubey, Sr. Advocate Mr. Ranjan Kumar Dubey, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 11-04-2018

The instant appeal has been preferred against the judgment and order dated 09.10.2001 passed by Shri Amaresh Kumar Lal the then 6th Additional District Judge, Saran who was later on elevated to this Court, in Test Suit No. 65 of 2001, Probate Case No. 32 of 1996 whereby and whereunder the Test Suit was allowed and the Letters of Administration of the Will of Mosmat Janki Kuar dated 30.10.1993 was granted in favour of the plaintiff/original respondent. The defendants are the appellants and the plaintiff was sole respondent who died during pendency of this



appeal and his heirs and legal representatives have been substituted as respondents.

2. The aforesaid Probate Case was filed under Section 276 of the Indian Succession Act for grant of Probate or Letters of Administration of the Will of Mosmat Janki Kuar the wife of Late Dharm Nath Singh resident of village Bharahopur Tole Konhargar, P.S.- Ekma, District- Saran. The Objectors entered appearance and filed objection and then the Probate Case was converted into Test suit.

3. Briefly stated, the case of the plaintiff is that Mosmat Janki Kuar (Testatrix) was the absolute owner of the land situated at village Bharahopur Tole Kohargar, P.S.- Ekma, District- Saran as mentioned in Schedule-A of the plaint. The plaintiff is related as Dewar of the said Testatrix and the plaintiff was serving her. She executed her will (Ext. 1) which was attested by Banke Dubey and Dalan Singh (PW 6) and the said Will was registered. She died on 18.11.1996 at her native village and the plaintiff performed the last rites and Shradh. The amount of the asset which is likely to be given to the plaintiff is worth Rs. 20,000/- which is mentioned in schedule-A and the amount of liability has been described in Schedule-B. The Will dated 30.10.1993 is the last Will of the



Testatrix. An objection/rejoinder was filed by the defendants opposing the grant of Letters of Administration to the plaintiff.

4. The case of the defendants is that they are heirs of Most. Janki Kuar and are in peaceful possession of her property. There was one Krishna Kuar who had two sons Chuni Kuar and Udit Kuar. Chunni Kuwar was unmarried and Udit Kuwar had two sons, Sewak Kuar and Rajpati Kuar. Sewak Kuar was unmarried and Rajpati Kuar had three sons Lobhi Kuar, Vikram Kuar and Ranjeet Kuar. Lobhi Kuar died issueless, Vikram Kuar had a son Yamuna Kuar and his wife is Rajkalo Kuar the defendant no. 2. He had two sons- Shiv Shankar Singh and Parmeshwar Singh (defendant no. 1). Ranjeet Kuar had two sons- Viran Kuar and Dharm Nath Singh. Viran Kuar died issueless and Dharm Nath Singh had a wife Janki Kuar (the Testatrix). Thus, the defendants are the heirs of Janki Kuar. Janki Kuar did not execute any Will and much less on 30.10.1993 and she had not put her L.T.I. on the said Will after understanding its contents nor did she ask any attesting witnesses to attest the Will nor she ever presented the Will for registration before the Registrar. The Will is forged, fabricated and manufactured document. Janki Kuar was an old illiterate lady, who had been suffering from paralysis, she was bed ridden and unable to move. She had lost her mental capacity and



she remained almost unconscious due to illness. The plaintiff obtained the L. T.I. of Janki Kuar on plain paper, in the state of unconsciousness and got a fraudulent Will prepared on it in collusion with the scribe, attesting witnesses and the registration authority and his staff. Schedule A property is imaginary and its valuation is not less than Rs. 4 lakhs. The liability mentioned in Schedule B is fictitious and wrong. It is wrong to say that the plaintiff performed last rites and Shradh of Janki Kuar. As a matter of fact the defendant no. 1 and his brother Sheo Shankar Singh performed her Shradh. The plaintiff is not entitled to grant of Probate or Letters of Administration of the Will in question.

5. The learned Additional District Judge on the basis of pleadings of the parties framed the following issues:

(i) Whether the Will is genuine ?

(ii) Whether the plaintiff is entitled to get the Letters of Administration of the will granted in his favour ?

6. Learned Trial Judge came to the conclusion that the Will is duly executed and registered and it is genuine and it was the last Will of the Testatrix and execution was made in sound state of mind and with duly understanding and accordingly, the Letters of Administration of the will was granted in favour of the plaintiff.



7. The defendants (Objectors) being aggrieved and dissatisfied with the said judgment and order have preferred this appeal challenging the maintainability of the same.

8. Shri Shashi Shekhar Dwivedi , learned Senior Counsel for the appellants arguing in this appeal has submitted that following facts are admitted in this case: (i) relationship of the appellants with the Testatrix, (ii) the document was not presented by the Testatrix before the Registrar, (iii) the execution was admitted before the Staff of Registry Office on commission and (iv) Most. Janki Kuar was an old and illiterate lady. This being the first appeal, this Court has to decide all questions of fact and law afresh appreciating / examining all the facts, circumstances and evidences on the record independently and it is well settled law and has been reiterated by the Apex Court in the judgment reported in **2018 (1) PLJR page 87 (SC)** (paragraph 19) in the case of **C. Venkata Swamy Vs. H. N. Shivanna (D) by L. R.**

9. Burden of proof in case of old and illiterate lady is on the person who takes the transaction to prove its genuineness and for that reliance has been placed upon a judgment reported in **1984 BBCJ page 605** (para 12) in the case of **Bibi Jaibunnisa vrs. Addul Ghaffoor and Ors.** and further in the judgment reported in **1984 BBCJ page 822** (paragraph 5) in the case of



Lallan Singh Vs. Dulhin Chandamani Devi and ors. Besides in case of Will where there are suspicious circumstances, the burden of proof is on the propounder of the Will to dispel all the suspicious circumstances by reasonable and satisfactory materials/evidence. The Will (Ext. 1) recites that the Testatrix loves Shankar Singh as a son and he by service fulfills the absence of son, then, why a sale deed (Ext. c) of about 8 Kattha for meeting legal necessity has also been executed on the same day to him and a small part of consideration money Rs. 2,000/- is recited to be paid at the time of exchange of registration receipt. There is no cogent/satisfactory explanation of this coincidence, rather it makes probable the preparation of fraud in execution of Will on the pretext of executing a sale deed. Admittedly, the Will was not presented by the Testatrix before the Registrar. It was presented by Shankar Singh. Admittedly, an application for appointment of a Commissioner was filed before the Sub-Registrar, Ekma for visiting Janki Kuar at home which is 1 and ½ kilometer away from the registration office to ascertain the execution by her and fulfill other formality. The Scribe in his evidence has admitted that the application for appointment of Commissioner will be in the Registry office. Shankar Singh also stated in his cross-examination that he will bring on record that application. However, no effort



was made to bring that application on record. Non-production of the application is very strong suspicious circumstance. There is no explanation why the said application was not brought on the record. For such non-production, adverse inference ought to be drawn under Section 114 (g) Evidence Act that if such document had been brought on the record, it would be against the case of the respondent propounder. Shankar Singh has deposed in his evidence that Brij Bihari Singh, nephew of Janki Kuar, was also present at the time of execution of the Will but he is not an attesting witness. He was the best person to be an attesting witness. Why he did not attest the Will is also a suspicious circumstance and there is no cogent explanation for his not signing the Will as an attesting witness. One of the attesting witness Dalan Singh (PW 6) has said that Janki Kuar had no difficulty in walking. If the witness is believed then, why she did not visit the Registration Office to present the Will and admit its execution. This is also a strong suspicious circumstance and there is no explanation for the same.

10. Learned Senior Counsel further argued that in this case Will has been marked as Exhibit on the basis of evidence of PW 3 Rambalak Singh who is a scribe. He is not an attesting witness, hence, in view of clear and mandatory provision of



Section 68 of the Evidence Act, the Will has not been proved according to law. Here, the execution has not been proved by the attesting witness but scribe. Hence, it cannot be used as evidence. Section 63 of Indian Succession Act mandates a Will to be attested by at least two witnesses. Scribe cannot be treated as an attesting witness as he has not signed as an attesting witness and has signed only as the Scribe. Further it is not pleaded that Scribe is also an attesting witness. Reliance has been placed upon a judgment reported in **AIR 2001 Supreme Court Page 2802** (paragraph 26 and 27) in the case of **N. Kamalam (dead) and another. vs. Ayyaswamy and Another**. PW 6 Dalan Singh has deposed and tried to prove execution and attestation but his cross-examination completely falsifies his credibility and he has utterly failed to prove the execution and attestation. He has stated in paragraph 5 that Scribe mentioned the lands in his presence on a document which was scribed on stamp paper. However, the Will is on plain paper and not on stamp paper and further it does not contain the details of the land. He also admits that he and Banke Dubey are attesting witness and sale deed also which was also executed on the same day and this execution was also admitted on 01.11.1993 on commission. So, the probability of fraud is quite high. Bankey Dubey has identified the Testatrix Janki Kuar on the Will, so, he is



an identifier on the Will, he cannot be an attesting witness and for that reliance has been placed upon a judgment reported in **AIR 1958 Patna page 566** (paragraph 6) **Jagdeo Chaudhary and Another Vs. Deo Chaudhary and another**. Therefore, only one attesting witness on the Will namely, Dalan Singh. So, the Will does not fulfill the requirement of two attesting witnesses as mandated by Section 63 of the Indian Succession Act. Thus, the respondents utterly failed to prove the due execution and attestation of the Will. The requirement of attestation as mandated by Section 63 of the Indian Succession Act and the proof of such document as required by Section 68 of the Evidence Act are of paramount importance. This requirement ought to be complied and for that reliance has been placed upon a judgment reported in **(2003) 2 Supreme Court Cases page 91** (paragraph 10) in the case of **Janki Narayan Bhoir Vs. Narayan Namdeo Kadam**. Further reliance has been placed upon a judgment reported in **(2009) 4 Supreme Court Cases 780** in the case of **Yumnam Ongbi Tampha Ibema Devi vs. Yumnam Joykumar Singh and others**. Further reliance has been placed upon a judgment reported in **(2009) 1 Supreme Court Cases 354** (Paragraph 18 and 19) in the case of **K. Laxmanan Vs. Thekkayil Padmini and others**. The requirement of law as laid down are wanting in the evidence



on behalf of the respondent. So, the execution and attestation as required by law has not been proved in this case.

11. Shri Kamal Nayan Choubey, learned Sr. Counsel for the respondent, arguing in this appeal has submitted that argument advanced by learned Sr. Counsel for the appellants is not tenable in the facts and circumstances of the present case. During pendency of the suit one of the attesting witness namely, Banke Dubey died and as such only one attesting witness namely, Dalan Singh was examined as PW 6 on the Will (Ext. 1). There are two attesting witnesses, so requirement of law has been fulfilled and further one of the attesting witness who was alive has been examined as PW 6 who has supported the case of the plaintiff. He has categorically stated in his examination in chief that he and Bankey Dubey had attested the Will. He has also stated that Late Bankey Dubey has also identified the thumb impression of Most. Janki Kuar. The Scribe of the Will namely, Ram Balak Singh has also been examined on behalf of the plaintiff as PW 3. He has categorically stated in his chief that Will was written by him as per direction of Most. Janki Kuar and contents of the Will has been read over and explained to her and she after understanding the contents of the Will gave her thumb impression over the Will in presence of Bankey Dubey and Dalan Singh who are attesting witnesses of the



Will. After execution of the Will, she gave it to Shankar Singh for getting its registration and accordingly, it was presented before the Registrar, thereafter, one Lal Babu Prasad (PW 4) was appointed as Commissioner by the Registrar for verification of the Will. The Scribe has identified the Will in question which was marked as Ext. 1. This witness has further clarified and disclosed about the date 13.01.1993 and 14.01.1993 as mentioned on the back page of the Will that those are the numbers of thumb impression, volume and year. i.e. 13-14 are the number of thumb impression, 1 is volume of Book and 93 is year. Lal babu Prasad, Commissioner, has also been examined in this case as PW 4. He has stated that he reached to the village and inquired about Most. Janki Kuar. She has been identified by Bankey Dubey. Mental condition of Janki Kuar was good and on inquiry by him Janki Kumar confirmed the execution of the Will in question. He has taken thumb impression of Janki Kuar on Will which was identified by Bankey Dubey. This witness has also stated that Bankey Dubey and Dalan Singh have put their signatures as attesting witness of the Will and he has written his report on 4th page of the Will and accordingly, it was registered on 01.11.1993. Dalan Singh, one of the attesting witness, has been examined as PW 6 in this case. He has stated that he and Bankey Dubey put their signatures on the Will as



witness to the Will on the direction of Most. Janki Kuar. He has also stated in his examination in chief that this is the Will which was executed by Most. Janki Kuar. This witness has also stated that Janki Kuar has put her thumb impression over the Will in presence of Bankey Dubey and Lal Babu Prasad. The plaintiff has been examined in this case as PW 7. He has fully supported his case. He has stated that the Will has been executed by free will and without any pressure by Janki Kuar. He has also stated that he has performed last rites and Shradh of Most. Janki Kuar. He has further stated that the Scribe has read over and explained the contents of the Will to Most. Janki Kuar who after understanding the contents of the Will put her thumb impression which was identified by late Banke Dubey. This witness has further stated that he has given application before the Registrar for appointment of Commissioner which was endorsed on the Will and allowed by the Registrar on the same date. On the next date the Commissioner has taken her thumb impression which was identified by Bankey Dubey. Ext. 4, the ration card, and Ext. 6, electoral role, show that Testatrix was fit mentally and was living with plaintiff. Ext. 8 and 8/A show that there was litigating terms of Testatrix with the Objectors and there was no cordial relationship of Testatrix with Objectors. From those documents it will be evident that Testatrix



was living with the plaintiff not with Objectors with whom she was on litigating terms. Recital of the Will shows that she was mentally fit and she after understanding the contents of the Will put her thumb impression over it in presence of Bankey Dubey and Dalan Singh. Ext. 9, voter identity card, shows that she has appeared for preparation of election identity card in the year 1995. The Objectors, on the other hand, in course of evidence, have failed to prove that mental condition of the Testatrix was not fit at the relevant time and that the Will in question has been executed over the document on which her thumb impression was taken earlier. The Objectors have not produced any document in support of mental condition of the Testatrix. The Objectors have also failed to prove that the Will in question was executed on a paper on which thumb impression was taken earlier. So far as execution of the sale deed dated 30.10.1993 is concerned, as Testatrix was in need of money to fulfill her legal necessity and as such she has executed the sale deed also in favour of the plaintiff. During life time of the Testatrix no one has any right over her property and as such during her life time she had executed the sale deed only with a view to fulfill her legal necessity and it is not a suspicious circumstance. It is well proved that there was litigating terms of Objectors with Testatrix and, on the other hand, she was served by



the plaintiff since she was living with the plaintiff which has been proved by Ext. 4 and Ext. 7 and being pleased with the services of plaintiff, she had executed the Will dated 30.10.1993 in presence of attesting witness Bankey Dubey and Dalan Singh and again reiterated and accepted the execution of the Will before the Commissioner, Shri Lal Babu Prasad, and again put her thumb impression before the Commissioner. From the evidences adduced on behalf of the plaintiff it is well proved that at the time of execution of the Will the Testatrix was mentally fit, contents of the Will was read over and explained to her and on being satisfied with the contents of the Will she has put her thumb impression in presence of Bankey Dubey who has identified her thumb impression and he was also the witness to the Will along with Dalan Singh. The Will (Ext. 1) has been legally proved not only by PW 3 rather by PW 6 also who is the one of the attesting witness. The rulings relied upon by the learned Senior Counsel for the appellants are not applicable in the present case and the cases of the aforesaid rulings are on different footings. Here, on the Will there are two attesting witnesses and one of the attesting witness has been examined to prove the will. The learned Trial Judge after going through the entire materials available on the record and discussing all issues raised by the Objectors has rightly allowed



the case in favour of the plaintiff respondent which requires no interference. Learned Senior Counsel for the respondents has submitted that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation formed therein nor what logically follows from the various observations made in it and for that reliance has been placed upon a judgment reported in **AIR 1968 Supreme Court page 647** (paragraph 13 page 651) in the case of **State of Orissa Vs. Sudhansu Sekhar Misra and Others**. Learned Senior Counsel has further submitted that suspicion means doubt, conjectures or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance and for that reliance has been placed upon a judgment reported in **(2003) 8 Supreme Court Cases page 537** (para 8) in the case of **Ramabai Padmakar patil (dead) through Lrs. And others. Versus Rukminibai Vishnu Vekhande and others**.

12. It has further been argued that it is well established principal that object of Court is to decide the rights of the parties, and not to punish them for mistakes they made in the conduct of their cases by deciding otherwise than in accordance with their



rights and reliance has been placed upon a judgment reported in **AIR 1967 Allahabad page 231** in the case of **Ronal Lloyed Powell and others. vs. Administrator General**. None production of the application for appointment of Commissioner and not signing of Brij Bihari Singh as attesting witness on the Will are not fatal for the case of plaintiff.

13. On the basis of rival contentions of the parties, the following points are under consideration in this appeal :-

(i) Whether the propounder of the Will has been able to dispel all the suspicious circumstance surrounding the Will reasonably and satisfactorily ?

(ii) Whether due/proper execution and attestation of the Will as required by law has been proved by the propounder of the Will ?

FINDINGS:-

14. This Court being the first appellate court has to decide all questions of fact and law afresh appreciating/examining all the facts, circumstances, and evidences on the record independently. Reliance placed by learned Senior Counsel for the appellants upon a judgment reported in **2018 (1) PLJR page 87 Supreme Court (Supra)** (paragraph 19) is well settled.



15. Point No. (I) & (ii) :- It is well settled that burden of proof, in case of old illiterate lady, is on the person who takes the transaction to prove its genuineness vide **1984 BBCJ 605 and 822** (Supra). Here, in this case the plaintiff has examined altogether 9 witnesses to prove its case. PW 1 is Rabindra Mishra. PW 2 is Ras Bihari Singh, PW 3 is Ram Balak Singh (Scribe). PW 4 is Lal Babu Prasad (Commissioner), PW 5 is Dinesh singh, PW 6 is Dalan Singh (attesting witness), PW 7 is Shankar Singh, PW 8 is Ram Jatan Mishra and PW 9 is Nagendra Kumar Dubey. Besides the oral evidence, the plaintiff has produced documentary evidence also. On the other hand, defendants have examined altogether seven witnesses. DW 1 is Madan Singh, DW 2 is Binda Singh, DW 3 is Ram Ashis Singh, DW 4 is Anil Prasad, DW 5 is Sunil Kumar Pandey, DW 6 is Parmeshwar Singh and DW 7 is Ram Shankar Singh. The defendants have also filed documentary evidences.

16. It is an admitted fact that the Testatrix was the near relative of the defendants but it has been proved by Ext. 8 and 8/A that is the judgment passed in Title Suit No. 156 of 1984 and Title Appeal No. 108 of 1990 that the Testatrix was on litigating terms with the defendants and she had no cordial relation with the defendants. The right of Testatrix to execute the sale deed of her



land was challenged by the defendants and it was held in those judgments that Janki Kuar had absolute right in the property and had right to dispose it off. Ext. 4, ration card, goes to show that the Testatrix was living with the plaintiff. Further Ext. 7, the electoral roll, also proves that the Testatrix was living with the plaintiff. It has come in the evidence that during the pendency of the suit Bankey Dubey, one of the attesting witness, died and Dalan Singh, the other attesting witness, who was alive, has been examined as PW 6. PW 6 has categorically stated that he and Bankey Dubey have attested the Will. He has also stated that Late Bankey Dubey has also identified the thumb impression of Most. Janki Kuar. This witness has identified the Will, so, requirement of law has been fulfilled in this case. The Scribe of the Will, Ram Balak Singh, has also been examined as PW 3. He has categorically stated that a Will was written by him as per direction of Most. Janki Kuar and contents of the Will was read over and explained to her and she after understanding the contents of the Will put her thumb impression over the Will in question in presence of Bankey Dubey and Dalan Singh. This witness has also stated that after execution of the Will, she gave it to Shankar Singh for getting its registration, thereafter, it was put up and on the application, one Lal Babu Prasad was appointed as Commissioner by the Registrar for



verification of the Will. Lal Babu Prasad, Commissioner, has also been examined as PW 4. He has stated that he was appointed as Commissioner by Registrar for verification as to whether the Will in question has been executed by Most. Janki Kuar or not. He has further stated that after reaching to the village, he inquired about Most. Janki Kuar, her mental condition was good, on inquiry Janki Kuar confirmed the execution of the Will in question, she was identified by Bankey Dubey. This witness has taken thumb impression on the Will which was identified by Bankey Dubey. This witness has also stated that Bankey Dubey and Dalan singh have put their signatures as attesting witness on the Will and then, he has written report on 4th page of the Will and accordingly, it was registered on 01.11.1993 by the Registrar. The plaintiff, PW 7, has fully supported his pleadings. He has categorically stated that Will has been executed by free will and without any pressure by Most. Janki Kuar. He has stated that he has performed last rites and Shradh of Most. Janki Kuar. He has also stated that the Scribe read over and explained the contents of the Will to Most. Janki Kuar who after understanding the contents of the Will put her thumb impression which was identified by late Bankey Dubey. This witness has further stated that he has given the application before the Registrar for appointment of Commissioner which was



endorsed on Will and allowed by the Registrar on same day. Lal Babu Prasad, Commissioner, on the next day has taken the thumb impression of Janki Kuar which was identified by Bankey Dubey. He has further stated that Bankey Dubey and Dalan Singh have put their signatures on the Will as the attesting witnesses. PW 1 Rabidnra Mishra has stated in his chief that Janki Kuar was living with Shankar Singh and she was looked after and cared by Shankar Singh. Janki Kuar died on 18.11.1996 and her Dhah Shanskar and other Sanskar were performed by Shankar Singh. He has been cross-examined at length but nothing has come to disbelieve his testimony. PW 2 Ras Bihari Singh has stated that Janki Kuar was his Fua (aunt). She was being served by Shankar Singh and his Fua was pleased with the services of Shankar Singh. Shankar Singh was the Dewar in relation of his Fua. He has also stated that his Fua executed the Will being pleased with the services of Shankar Singh in his favour on 30.10.1993. He has also stated that Janki Kuar died on 18.11.1996 and her Dhah Shanskar and other Sanshkar were performed by Shankar Singh. He has also stated that his Fua never became unconscious and she has got full understanding and capacity till her death. He has also been cross-examined at length but nothing has come to disbelieve his testimony. PW 5, Dinesh Singh, has served Dasti Summon to



Dalan Singh. He has proved the report of Dasti Summon as Ext. 2. PW 8, Ram Jatan Mishra, has proved ration card. He has stated that Janki Kuar died on 18.11.1996 and her Dhah Shanshkar was performed by Shankar Singh and Shradh was also performed by Shankar Singh and he has taken photographs of those events. He has proved negatives of those photographs as Ext. 3 series. Further he has proved the enlarged positive photographs as Ext. 4 series wherein Shankar Singh has been shown performing the last rites and other rites. He has also been cross-examined but nothing has come to disbelieve his testimony. From the evidences adduced on behalf of the plaintiff, it is well proved that Janki Kuar was living with the plaintiff and not with the defendants with whom she was on litigating terms. The mental condition of the Testatrix was fit and she after understanding the contents of the will put her thumb impression over the same in presence of Bankey Dueby and Dalan Singh. From Ext. 9 it appears that she had capacity to move and she got prepared Ext. 9.

17. On the other hand, DW 1 Madan Singh has proved the rent receipts as Ext. A which is not relevant. DW 2 Binda Singh has come to say that Janki Kuar got paralytic attack three years before her death. She has no capacity to understand. He has also stated that the mother of the plaintiff and Janki Kuar were



sisters. During cross-examination this witness was unable to say as to when Janki Kuar got paralytic attack. He cannot say who was treating Janki Kuar. He has admitted enmity with Shankar Singh as Shankar Singh has lodged case of theft against this witness. Thus, no reliance can be placed upon the statement of this witness. DW 3 Ram Ashish Singh has also come to say that Janki Kuar died due to paralytic attack as she was suffering from paralysis from 2 years before her death. He has stated that Shradh ceremony of Janki Kuar was performed by Parmeshwar and Parmeshwar Singh has performed all Shanskar. During cross-examination he has admitted that Jamuna Kuar the father of Parmeshwar Singh has filed Title Suit against Janki Kuar wherein also he has deposed in favour of Jamuna Kuar but Janki Kuar won that case. Janki Kuar has executed the sale deed in favour of Pramod Kumar Singh and for that Suit was brought. Further during cross-examination after seeing Ext. 4E, the photographs, he has admitted that the woman who is in the photo is Janki Kuar. He cannot say as to when Janki Kuar got paralytic attack. Thus, this witness appears not helpful to the defendants. DW 4 is a formal witness. He has proved Ext. A/1 rent receipts which is not relevant. DW 5 has come to say that Parmeshwar Singh has performed Dhah Shanskar of Janki Kuar and all the rites were performed by Parmeshwar Singh. Janki Kuar



was the patient of paralysis. During cross-examination this witness cannot say the name of father-in-law of Janki Kuar. He cannot say the name of sons and daughter of Parmeshwar Singh. After seeing Ext. 4/J this witness has stated that Shankar Singh is giving fire in the mouth. He cannot say as to whether this is the photo of Janki Kuar or not. He cannot say the boundary of house of Janki Kuar and Parmeshwar Singh. This witness is not helpful to the defendants. DW 6 is defendant no. 1 himself. He has come to support his case. He is interesting one, so in view of documentary evidence as discussed above no reliance can be placed upon his evidence. DW 7 Rama Shankar Singh has come to say that Janki Kuar was suffering from paralysis three years before from her death and she died due to paralysis. She has lost her mental equilibrium. In paragraph 6 of his cross-examination he has stated that lastly he met with Janki Kuar in the year 1994 and at that time she was living in another house. He has been suggested that Janki Kuar was having full sense and capacity of understanding till her death and she was not suffering from paralysis. Ext. c has been filed on behalf of the defendants which is the sale deed executed by Janki Kuar in favour of Shankar Singh which is certified copy of the sale deed. This deed was also executed on 30.10.1993 and was registered on 01.11.1993 after report of the commissioner.



This document is not helpful to the defendants, rather it goes to prove that the Testatrix has also executed the sale deed on the same day in favour of the plaintiff and she was having capacity of understanding and after understanding the contents of the sale deed she has executed the sale deed and admitted the execution of the sale deed before the Commissioner. The plaintiff has succeeded to dispel all the suspicious circumstances surrounding the Will reasonably and satisfactorily and further examining PW 6 Dalan Singh one of the attesting witness has also succeeded to proof the due execution and attestation of the Will as required by law. It is well proved that Testatrix has executed the deed of Will in favour of the plaintiff and also a sale deed on the same day after understanding the contents of the Will and sale deed. It is proved that the Testatrix was pleased with the services of the plaintiff and she has executed the Will after understanding the contents of the will, the Testatrix did not remain confined to bed from 1993 till her death. She had the capacity to move and she was living with the plaintiff. The attesting witness also can act as identifier. The ruling relied upon A.I.R. 1958 Patna 566 (Supra) is on differing footing.

18. The learned Trial Judge has rightly allowed the petition and has rightly granted the letters of Administration of the Will in favour of the plaintiff. The will is duly executed and



registered and it is genuine and the last Will of the Testatrix and execution was made in sound state of mind and with duly understanding by the Testatrix. The ruling in this regard relied upon by the learned Senior Counsel for the appellant are not applicable in the present case. Here, it is proved that one of the attesting witness has died and another attesting witness, PW 6, has been examined and he has proved due attestation and execution of the Will (Ext. 1).

19. The judgment and order passed by the learned Trial Judge is hereby confirmed .

20. In the result, this appeal stands dismissed but under the circumstances without cost.

(Jitendra Mohan Sharma, J)

avin/-

AFR/NAFR	NAFR
CAV DATE	27.03.2018
Uploading Date	11.04.2018
Transmission Date	11.04.2018

