

IN THE HIGH COURT OF JUDICATURE AT PATNA
Test Case No.13 of 2014

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In The Goods Of Late Haricharan Mahto son of Late Narayan Mahto, R/o Sabalpur, Chipura, P.S.- - Gaurichak, District- Patna

And

In the matter of an application under Sections 273 and 278 of the Indian Succession Act for grant of Letters of Administration of the Will dated 16.02.1984

and

In the matter of Arjun Singh son of Late Abadh Bihari Singh, R/o village- Sabalpur, Sipura Post- Sipura Purbe, P.S.-Gaurichak District- Patna
.....Applicant

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Appearance :

For the Petitioner/s : Mr. Naresh Prasad
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

C.A.V. JUDGMENT

Date : 27-04-2018

Learned counsel for the applicant has been heard.

2. This testamentary case has been filed by the applicant for grant of Letter of Administration of the Will dated 16.02.1984 executed by the Testator Late Haricharan Mahto for disposition of his properties standing in his name after his demise.

3. Briefly stated, the case of the applicant is that properties covered under the Will along with several other properties are the self acquired as well as ancestral properties of the Testator.

4. The Testator was a Hindu governed by Mitakshara School of Hindu Law and was a permanent resident of Sabalpur, Chipura, P.S.- Gaurichak, District-Patna.

5. The Testator died on 28.02.1984 at his village home



in the district of Patna leaving behind this Will to take effect after his death.

6. The Testator has no son and daughter and the applicant is his nephew. The Testator left behind him following near relatives besides the applicant: (i) Ramanand Prasad Singh son of Late Abadh Bihari Singh (nephew), (ii) Mahendra Prasad Singh @ Vijay Singh son of Late Abadh Bihari Singh (nephew), both resident of village- Sabalpur, Chipura, P.S.- Gaurichak, District- Patna.

7. The Will dated 16.02.1984 was duly executed by the said Testator in sound state of mind and health. He had voluntarily executed the said Will after fully understanding its contents without any undue influence of anybody in presence of the following attesting witnesses :

- (i) Brij Bihari Singh son of Harit Lal Singh, R/o Sohdi, P.S.- Gaurichak, P.O.- Gopalpur, District- Patna
- (ii) Vijay Kumar Sudhanshu son of Ramanand Singh, R/o Sona Gopalpur, P.S. & P.O.- Gopalpur, District- Patna

8. The Will dated 16.02.1984 is the last Will of Testator. The properties covered under the Will and its valuation has been given in Schedule A of the application which comes to Rs. 1,10,00,000/- (one crore and ten lakhs) whereas the liabilities and other deductions are mentioned in schedule B of the plaint which is only Rs. 1,000/- (one thousand).

9. After institution of this case, special citations were



issued against the two near relatives. They appeared and filed Vakalatnama but did not raise any objection for grant of Letters of Administration of the Will in favour of the applicant. The general citations were also published in Times of India and Prabhat Khabar daily news paper but in response thereof no one appeared to object the grant of Letters of Administration to the will dated 16.0.21984 executed by the Testator. Hence, this case remained uncontested till the end.

10. In support of the case the applicant examined Vijay Kumar Sudhanshu one of the attesting witness of the Will as AW 1, Brij Bihari Singh other attesting witness as AW 2. The present applicant Arjun Singh has also been examined as AW 3. During examination of AW 1 original Will was marked as Exhibit 1 and signature of AW 1 was marked as Ext. 1/1 whereas signature of AW 2 has been marked as A/2 on the Will.

11. During examination of the witnesses, both the attesting witnesses Vijay Kumar Sudhanshu AW 1 and Brij Bihari Singh AW 2 had approved the attestation in terms of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. Aw 3 Arjun Singh has also fully supported his case.

12. Aw 1 Vijay Kumar Sudhanshu has stated that he knew the Testator. The Testator called myself as well as Brij Bihari Singh at the time of execution of the Will, Sukhdeo Giri, Typist, read over the contents of the Will to the Testator in their presence in



Hindi. The Testator after understanding the contents executed the Will and at his request I and Brij Bihari Singh signed as attesting witnesses. At the time of execution of the Will, mental condition of Haricharan Mahto was sound and he was in good state of health. After execution of the Will the Testator Haricharan Mahto died on 28.02.1984. He has proved the Will which has been marked as Ext. 1 and his signature has been marked as Ext.1/1.

13. AW 2 Brij Bihari Singh has also stated in his deposition that Haricharan Mahto executed the Will on 16.02.1984, at the time of execution of the Will his mental condition was fit and he died after 10-12 days of the execution of the Will. The Will was executed in his presence as well as in presence of Vijay Kumar Sudhanshu. This witness has proved his signature as Ext. 1/2.

14. AW 3 Arjun Singh has fully supported his case as made out in the application. He has stated that Haricharan Mahto (Testator) was my elder uncle and he was issueless. He died on 28.02.1984. The said Haricharan Mahto executed the Will of his property in his favour on 16.0.21984 and last rituals of Haricharan Mhato was performed by him. The Will was executed in presence of the witnesses, Brij Bihari Singh and Vijay Kumar Sudhanshu. He has stated in affidavit that all the near relatives have been noticed and they have no objection to grant of Letters of Administration. They have appeared and filed Vakalatnama also.

15. In view of the aforesaid evidences available on the



record and going through the original records, this Court is satisfied that the Testator Haricharan Mahto had executed the Will dated 16.02.1984 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.

16. This Court also holds that Ext. 1 is the last Will and Testament of the Testator Haricharan Mahto.

17. Accordingly, this application is allowed. Let the Letters of Administration of the Will dated 16.02.1984 be issued in favour of the applicant of this case with a copy of the Will annexed therewith of which shall be effect throughout the territory of India.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
CAV DATE	20.04.2018
Uploading Date	07.05.2018
Transmission Date	

