

IN THE HIGH COURT OF JUDICATURE AT PATNA**Test Case No.3 of 2011**

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In the Goods of Late Birendra Nath Sen, son of Late Rabindra Nath Sen, resident of Flat No.-101, Satyam Apartment, 12 S.K. Puri, P.O. and P.S.-S.K. Puri, Towan and District – Patna-800001.

AND

In the matter of an application filed u/s 273, 276 r/w 300 of Indian Succession Act for grant of probate of Registered Will dated 30.12.2008 executed by Testator Late Birendra Nath Sen.

AND

In the matter of an application filed by (1) Smt. Manju Malini, wife of Late Birendra Nath Sen, (2) Ms. Geetika Malini @ Geeteeka Malini, D/o Late Birendra Nath Sen, both resident of Flat No. 101, Satyam Apartment, 12, S.K. Puri, P.O. and P.S. S.K. Puri, District Patna.

----- **Applicants.**

Appearance

For the applicants : - Mr. Subratheshwar De, Advocate.
Mr. Subhdeep Das, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 24-08-2018

1. Heard Counsel for the applicants.



2. The present Testamentary case has been filed by the two applicants under sections 273 and 276 read with section 300 of Indian Succession Act, 1925 for grant of Probate of Registered Will dated 30.12.2008 executed by Testator Late Birendra Nath Sen for disposition of properties standing in his name after his death. The Testator was a Hindu governed by the Dayabhaga School of Hindu Laws. The Testator died on 03.12.2009 at about 7 P.M. at his S.K. Puri, Patna residence leaving behind the Registered Will dated 30.12.2008 for his self acquired properties to take effect after his death.

3. The Testator Birendra Nath Sen had married twice in his life time. His first wife Smt. Archana Sen died on 14.05.2000 leaving behind one son, namely, Subrato Sen and one daughter, namely, Dr. Indira Sen. Both heirs, namely, Subrato Sen and Dr. Indira Sen have now, permanently settled abroad in United Kingdom

4. The present applicant no. 1 is the second wife of Testator and applicant no. 2 is the daughter of applicant no. 1.

5. Under the Registered Will dated 30.12.2008 executed by the Testator, the Testator has bequeathed his entire property in favour of two applicants jointly. The Testator has also appointed the two applicants as executors to the Will.

6. From the perusal of original Registered Will dated



30.12.2008, it is apparent that Testator had voluntarily executed the will dated 30.12.2008 without any undue pressure or influence of any body in presence of following two attesting witnesses namely; (i) Sri Devdutt Srivastava son of Sri Upendra Prasad, Lala Toli, Chota Telpa, Chapra (ii) Sri Suresh Chandra son of Sri Dharam Das Choudhary, B-4/302, PRDA Apartment south Sri Krishna Puri, Patna.

7. The Will was registered on same day i.e. on 30.12.2008 before the Registering Officer, office of District Sub-Registrar, Patna, where Sri Devdutt Srivastava also stood identifier before the Registering Officer, Patna.

8. The properties covered under the Will dated 30.12.2008 are self acquired properties of the Testator, valuation of which has been given as Rs. Fifteen lakhs only in Schedule-A of the application. In Schedule-B of application, the applicants have furnished the amount of Rs. One thousand only as amount of liabilities and other deductions.

9. In the application, the applicants have further averred that save and except the present application, no other application has been either made to this Court or to any other High Court/District Court for grant of probate of Will dated 30.12.2008 executed by the present testator.

10. After institution of case, the special citation was issued to



two near relatives mentioned in para-6 of petition. Vide order dated 07.08.2014, service of special citation upon two near relatives residing in United Kingdom were held to be validly served through the Ministry of Law and Justice, New Delhi. Despite valid service of special citation, the two near relatives did not appear before this Court. The general citations were also published in two local daily newspapers, namely, Times of India in English and Dainik Aaj in Hindi, both published from Patna on 19.02.2012, but in response thereof, no one appeared to object the grant of probate of Will dated 30.12.2008 in favour of present two applicants as result of which, this case remained uncontested till the end.

11. During the trial of the case, the applicants examined four witnesses in support of their case including two attesting witnesses of the Will and two applicants themselves. Devdutt Srivastava, one of the attesting witnesses of the Will was examined as A.W.-1. Another attesting witness Suresh Chandra was examined as A.W.-2. Applicant no. 2 Geetika Malini was examined as A.W.-3 and applicant no. 1 Manju Malini was examined as A.W.-4. During examination of A.W.-1 Devdutt Srivastava on 11.09.2014, entire original Will was marked as Ext.-1. The signature of testator on each page of Will dated 30.12.2008 were marked as Ext.-2 to 2/7. The signature of attesting witnesses Devdutt Srivastava and Suresh Chandra on the last page of



Will were marked as Ext.-3 & 4 respectively. Signature of Typist Om Prakash on last page of will was marked as Ext.-5. The signature of Identifier Devdutt Srivastava on the back of first page of will was marked as Ext.-6.

12. During his evidence A.W. 1 Devdutt Srivastava stated that the testator was his **mausa**, who executed his Will in sound state of body and mind. He had put his signature as attesting witness on the last page of Will on the request of testator. He also identified the signatures of testator on every page of the Will (Ext.-2 series) as also his own signature on the last page of the Will (Ext.-3). He also identified the signatures of another attesting witness Suresh Chandra as well as Typist of Will Om Prakash on the last page of the Will (Ext.4 & 5). A.W. 1 Devdutt Srivastava also stood as identifier before the Registering Officer, which on the back of first page of the Will. It was marked as Ext.-6. A.W.1 further stated that the Will dated 30.12.2008 was typed by Om Prakash on the oral instruction of testator. After the Will was typed the testator signed on the each page of the Will. Thereafter, on his request, A.W.1 Devdutt Srivastava and A.W.2 Suresh Chandra put their respective signatures as attesting witnesses on the last page of the Will. The Will was registered on the same day before the Registering Officer, office of the Sub-Registrar, Patna.



13. During his examination A.W. 2 Suresh Chandra stated that the testator Late Birendra Nath Sen had executed the Will on 30.12.2008 in his presence and at that time, testator was physically and mentally fit. A.W. 2 identified the Will as also the signature of testator Late Birendra Nath Sen on each page of Will as also his own signature as well as signature of first attesting witness on the last page of the Will.

14. Thus, both the attesting witnesses, namely, Devdutt Srivastava and Suresh Chandra have approved the attestation of Will in terms of section-63 of Indian Succession Act and section-68 of Indian Evidence Act.

15. A.W. 3 Geetika Malini stated in her deposition that she along with her mother Manju Malini are the applicants of the case. She further stated that under the Will dated 30.12.2008 executed by Late Birendra Nath Sen, she along with her mother Manju Malini has been appointed as executor of the Will also.

16. A.W. 4 Manju Malini, in her deposition, stated that she is the applicant no. 1 of the case. She was the second wife of the testator. The testator has bequeathed his property in favour of her (Manju Malini) as also in favour of her daughter (Geetika Malini) born out of wedlock with her first husband. She also identified the signatures of testator and two attesting witnesses over the Will dated 30.12.2008



executed by the Birendra Nath Sen. On the direction of the Court, she further stated that the son and daughter of the testator from his first wife are Subrato Sen and Dr. Indrani Sen Gupta. Both of them have now settled in United Kingdom and have no interest in the case. Hence, this case is uncontested one.

17. In view of aforesaid evidences available on record and after going through the original records of the case, this court is fully satisfied that the testator Late Birendra Nath Sen had executed the Will dated 30.12.2008 in sound state of body and mind and without any external pressure or coercion or representation from any quarter; after understanding the contents of the Will. This Court find no difficulty in accepting the fact that the execution of Will has been proved beyond reasonable doubt as also that the Will dated 30.12.2008 is the last Will of testator Late Birendra Nath Sen.

18. Accordingly, this application is allowed. Let the probate of the Will dated 30.12.2008 be issued in favour of two applicants of this case with a copy of Will annexed thereof which shall have effect throughout the territory of India.

Shahid/-

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	3.8.2018
Uploading Date	27.8.2018
Transmission Date	27.8.2018

