

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.491 of 2017

IN

MA 234 of 2014

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1. Smt. Photo Devi Wife of Sheo Barat Singh At present resident of village- Bahera, Bhurkunda, P.S.- Barachatti, District- Gaya.

2. Murari Singh

3. Anil Singh Both Sons of late Balmukund Singh

4. Meena Devi D/o late Balmukund Singh All Resident of Village- Ghorsari, P.S. Barachatti, District- Gaya. Petitioners.

Versus

1. Sushila Devi @ Kaushalya Devi Daughter of late Sheo Barat Singh At present resident of village- Bahera, Bhurkunda, P.S.- Barachatti, District- Gaya.

2. Sri Kamla Kant Singh Son of Sri Brahma Lal Singh Resident of Village- Bahera, Bhurkunda, P.S.- Barachatti, District- Gaya.

3. Smt. Mira Devi@ Munni Devi Daughter of late Sheo Barat Singh, Wife of Sri Kant Singh Resident of Village- Paruri, P.S. Hanterganj, District- Hazaribagh.

4. Damyanti Devi@ Billu Devi Daughter of late Sheo Barat Singh, Wife of Pawan Singh Resident of Village- Uchirama, P.S.- Sherghati, District- Gaya. Respondents.

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Adv.

: Mr. Binod Kumar, Adv.

For the O.P. No.2 : Mr. Ramesh Kumar Chaudhary, Adv.

For the O.P.Nos 1, 3& 4 : Mr. Shivendra Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 12-09-2018

Heard learned counsel for the petitioners and learned counsels for the opposite party No.2. Learned counsel of opposite party nos.1, 3 & 4 did not advance any argument despite putting appearance in the Court.

This review petition has been preferred to review the judgment dated 15.11.2017 passed by this Court in M.A. No. 234 of 2014, whereby this court dismissed the aforesaid appeal filed by the appellant upholding the judgment passed by the learned trial



Court.

The factual matrix of the case is that opposite party no.2 filed a petition for grant of probate in respect of Will dated 04.05.1984 executed by Sheo Barat Singh in his favour. The aforesaid probate petition was allowed by the learned 1st Additional District Judge, Gaya vide judgment dated 16.12.2013 in Title Suit No. 04 of 1992. Being aggrieved with the aforesaid judgment of learned trial Court, one of the opposite parties of the said case, namely, Sushila Devi @ Kaushalya Devi filed M.A. No. 234 of 2014 before this Court. After hearing learned counsel for the appellant and learned counsel for the respondent no.1 of the said appeal only, as none turned up on behalf of respondent nos.2 to 5 to advance the argument in the case despite service of notice and putting appearance in the case, this Court vide Judgment dated 15.11.2017 dismissed the aforesaid appeal uploading the judgment passed by the learned trial Court on merit.

Being aggrieved with the aforesaid judgment of this Court, the petitioners, who happen to be respondent nos. 2 to 5 of the said appeal, has preferred this review petition to review the aforesaid judgment passed by this court.

It is submitted by the learned counsel for the petitioners that the said Will does not bear the signature of the testator Sheo



Barat Singh and the said signature was challenged by the petitioners vide their written statement but the learned trial court without getting the signature examined by the handwriting expert found the same of the aforesaid testator. It is further submitted that attestation of the Will as per Section 63 of the Indian Succession Act has not been done as the attesting witness has nowhere stated in his deposition that he has seen the testator signing the Will. It is further submitted that there has been suspicious circumstances shrouding the execution of the Will raising serious doubts about its sanctity as the testator was admitted in the Ranchi Hospital and he was seriously ill and died in the state of ailment in the said hospital two days later to the execution of the Will. The testator had died leaving behind his widow and two married and two unmarried daughters. The said Will is executed in respect of 67 decimals of land including house without making any provision for accommodation and earning of the widow and the daughters of the testator. The property as mentioned in the Will is not of the testator rather it is stridhan of petitioner no.1 i.e. Photo Devi and she had sold it out in connection of marriage of her daughter. The aforesaid aspect of the case makes the Will highly suspicious but the said fact could not be brought before this court as the learned counsel for the petitioners could not turn up before the Court on the date



fixed for want of instruction from their client due to lack of contact. Thus there is an error apparent on the face of the record which warrant, the review of the judgment of this Court.

On the other hand, learned counsel for the opposite party no.2 submitted that the petitioners have filed this review petition for reopening the case by taking new point in the pleadings which is not permissible in law. The power of review can be exercised only to correct/modify the apparent error in the order under review and not to reopen the entire matter afresh on merit. It is further submitted that the petitioners did not choose to contest the probate case rather kept watching the proceeding of the Court from outside the Court. Sushila Devi @ Kaushlya Devi along with present petitioners filed a joint and common written statement before the learned trial Court but they did not appear to contest the same. When this opposite party succeeded in probate case, one of the daughters of the testator, namely, Sushila Devi @ Kaushlya Devi very clearly challenged the judgment of the learned trial Court before this Court making the petitioners of this review petition as respondents in the said appeal. It is further submitted that the question of taking steps for comparison of signature of testator on Will with admitted signature does not arise at all as the petitioners left the pairvi in the case before the learned trial Court and before



this Court. They are now stopped to open their mouth with regard to genuineness of the Will. The learned trial Court and this Court after considering the matter have found the Will genuine and valid, executed by the aforesaid testator in sound health and mind. This Court has also found writing of the signature of testator matches with other contents of will written on the margin of Will by the testator.

Petitioners by filing reply to the counter affidavit of the opposite party no.2 vehemently denied the aforesaid submission made by the learned counsel of O.P. No.2.

From perusal of the record, it appears that the learned trial Court, after finding the Will genuine, allowed the probate case which was challenged by Sushila Devi @ Kaushlya Devi vide M.A. No.234 of 2014. In the said appeal, when the case was called out only the appellant and the respondent no.1 of the said appeal turned up before this Court while none turned up on behalf of respondent nos.2 to 5 (petitioners of this review petition) to advance the argument in this case despite service of notice and putting appearance in the case and after hearing the parties and perusing the record and considering all the facts and circumstances of the case and all the arguments advanced by the appellant and respondent no.1, this Court had passed the judgment dated



15.11.2107 dismissing the appeal and upholding the judgment of the learned trial Court. The petitioners, who did not turn up to advance argument in the aforesaid appeal, now, by filing review petition had prayed to review the said judgment on the submissions as detailed hereinabove.

From perusal of the record, it further appears that before the learned trial Court, the petitioners after filing common and joint written statement had also disappeared and had neither adduced any evidence nor contested the case and the aforesaid probate case was decided on merit after hearing the opposite party no. 2. In the miscellaneous appeal also the petitioners did not take part in the argument of the case rather disappeared by putting appearance in the case. Learned counsel for the petitioners has taken ground of disappearance in the appeal as want of instruction from his client due to lack of contact which does not appear to be convincing. This Court, finding the signature of the testator on the Will, attestation of the Will as per the provision of law, making provision for the accommodation and earning of the wife and the daughters by the testator in the Will itself, and execution of the Will by the testator in his sound health and mind and fully understanding the contents of the Will, has passed the aforesaid judgment and there appears to be no error apparent on the face of



the record warranting review of said judgment. Petitioners appear to have challenged the aforesaid judgment of this Court by way of an appeal in the guise of the review petition.

In the facts and circumstances of the case, I do not find any merit in this review petition and accordingly it is dismissed.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.09.2018
Transmission Date	15.09.2018

