

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.238 of 2011

ANJANI KUMAR JHA, son of Shakti Nath Jha, resident of village-
Fathehbed, P.O. + P.S. Hajipur Sadar, District, Vaishali

... .. Appellant/s/ legal representative of O.P. No.5
Versus

- 1) DINESH JHA, son of late Rama Kant Jha, resident of village- Bjoja Patti, Police Station- Sarai, District, Vaishali
- 2) Akhilesh Kumar Jha, son of late Rama Kant Jha, resident of village- Bjoja Patti, Police Station, Sarai, District, Vaishali ...1st set respondents
- 3) Bhola Nath Jha Respondent No.IIA
- 4) Shyam Nanda Jha Respondent No.IIB
- 5) Uma Shankar Jha Respondent No.IIC
- 6) Anirudh Jha Respondent No.IID
- All sons of Radha Kant Jha, resident of Fatehabad, P.S. Hajipur, District, VaishaliApplicants / 2nd respondents
- 7) Suresh Mishra, son of late Sarjug Mishra Respondent No.VIIA
- 8) Anjani Mishra, son of Shakti Nath Mishra- Respondent No.VIIC
- 9) Ajay Mishra, son of Shakti Nath Mishra Respondent VII D
- 10) Gangadhar Mishra, son of late Bigan Mishra Respondent No.IV
11. Ramchandra Jha, son of late Jamuna Mishra, Vill, Fatehabad, P.S. Hajipur Sadar, Dist. Vaishali
12. Tribeni Mishra, son of late Brijesh Mishra Respondent No.VI
- All residents of vilalge- Bhoja Patti, P.S. Sarai, District, Vaishali
13. Trinesh Jha, s/o late Rama Kant Jha, R/o village- Bhoja Patti, P.S. Sarai, Dist, Vaishali
- 14 Ramesh Jha, Vill- Fatehabad, P.S. Hajipur Sadar, Dist.. Vaishali

...3rd set respondents

Appearance :

For the Appellant/s	:	Mr. Ravindra Griyaghey Mr. Sunil Kumar Mr. Ravishankar, Advocates
For the Respondent/s	:	Mr. Nandan Prasad Singh Mr. Naresh Nandan, Advocates

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 30-07-2019

Heard the parties.

2. This appeal under Section 299 of the Indian Succession Act has been filed against judgment and decree dated 14.12.2010 passed by the Additional District Judge-III,



Vaishali at Hajipur passed in Probate Case No.15/2001 by which the learned probate court has allowed the application for grant of will filed on behalf of the applicants/respondents.

3. Briefly stated the facts of the case is that Testator Rajendra Mishra leaved in village Fathehabed, P.S. Hajipur Sadar in the district of Vaishali. He owned and possessed landed property in the aforesaid village as well as other villages measuring 2 bighas and 11 kathas. Testator Rajendra Mishra executed a will on 26.08.2000 in favour of propounder of the will Ramakant Jha in respect of his properties which was duly registered. Details of the property were not mentioned in the will but same was appended at the Foot of the application for grant of probate of will. Testator Rajendra Mishra died on 11.07.2001 at the age of 85 at his native village. Applicant Ramakant Jha claims to have performed his last rites and Shradh at his own expense and also claimed to have come in possession over the property left by testator Rajendra Mishra.

4. Applicant Ramakant Jha filed an application in the court of District Judge, Vaishali under Section 276 of Indian Succession Act, 1925 for grant of probate of will dated 26.8.2000 executed in his favour in which he was made executor. Ramakant Jha was own brother-in-law of testator. In



his application for grant of probate of will, he stated that will was executed on 26.08.2000 by the testator in sound disposing state of mind without any coercion and undue influence and was executed by the testator out of his free will and volition. The deed of will was scribed by Lalan Prasad Singh, Advocate (AW4) on the instruction of testator Rajendra Mishra which was read over and explained to him and after fully understanding the content of will, he put his LTI in presence of two attesting witnesses Jagdish Mishra (AW1) and Gangadhar Jha (AW2) who also put their signature as attesting witnesses in presence of testator. His LTI was identified was identifying witness Jagdish Mishra (AW1). Will was duly registered.

5. Notices were issued under general citation and also on opposite parties who were near relatives of testator Rajendra Misha. Opposite party no.1, 2, 3, 4, 6, 7 and 8 appeared and supported the case of applicant and stated that they have no objection if probate is granted in favour of applicant Ramakant Jha.

6. Opposite party no.5 Shakti Nath Jha who was also brother-in-law of testator opposed the grant of probate in favour of applicant and after his death, his two sons Anjani Kumar Jha (appellant) and Ajay Kumar Jha were substituted in



his place. Ajay Kumar Jha supported the claim of applicant whereas opposite party Anjani Kumar Jha (appellant) adopted the written statement filed by his father.

7. Original opposite party Shakti Nath Jha in his written statement had stated that testator Rajendra Mishra did not execute will dated 26.08.2000 in favour of applicant Ramakant Jha. Testator Rajendra Mishra was an old man suffering from illness much earlier prior to 11.07.2001 and not enjoying sound state of body and mind and not in a position to understand what is good and beneficial for him and characterized the will as forged and fabricated document never executed by Rajendra Mishra and when Rajendra Mishra came to know about the will, he became shock which obviously affected his health and ultimately he died on 11.07.2001 at 5 a.m.

8. Wife of Shakti Nath Jha was full sister of wife of Rajendra Mishra. Rajendra Mishra was pleased with his services rendered to him and executed a will dated 21.05.2000 in favour of Usha Devi, wife of Anjani Kumar Jha (appellant) measuring 12 kathas of his lands, i.e., 1/4th share of 2 bighas and 11 kathas of land possessed by the testator. Pattidars of opposite party brought Sumitra Devi and Ramakant Jha



(applicant) from their village and obtained LTI of testator Rajendra Mishra on two blank-sheets on 15.8.2000 at 1.30 p.m. when he was sleeping after taking lunch and Usha Devi/ (O.P.W.3) was an eye witness of this fraudulent act and prayed to dismiss the application for grant of probate by the applicant.

9. On the rival pleadings of the parties, the probate court framed four issues for its determination which are as follow:-

“1. Is the probate case as framed maintainable?

2. is deed of will dated 26.8.2000 duly and legally executed by Rajendra Mishra infavour of Rama Kant Jha?

3. Is the deed of will in question the last Will of Testator Rajendra Mishra?

4. Are applicants entitled to get probate in respect of Will in question?”

10. Applicant has examined four witnesses to establish due execution and attestation of will. A.W. 1, Jagdish Mishra and AW2 Gangadhar Jha are attesting witnesses of the will and AW 4 Lalan Prasad Singh, Advocate is the scribe of the will who in their deposition have stated that testator Rajendra Mishra got the will drafted by Lalan Prasad Singh (AW 4) and same was typed by Typist Ashok Kumar Singh (not examined) and thereafter contents of will were read over and explained to



testator Rajendra Mishra in their presence and who after fully understanding the contents of will put his LTI over the will in their presence and his LTI was identified by Jagdish Mishra (AW1). Both Jagdish Mishra (AW1) and Gangadhar Jha (AW2) attested the will at the instance of testator Rajendra Mishra by putting their signature on the will. All the witnesses have stated that testator Rajendra Mishra executed the will in sound state of mind and body and out of his own free will and volition and without any pressure from any corner. Will was presented after execution before the Sub-Registrar, Registration office, Vaishali by the testator Rajendra Mishra who admitted his execution of will before the Sub-Registrar and, thereafter, put his LTI in their presence and same was identified by Jagdish Mishra (AW1) before the Sub-Registrar. Two documentary evidence were produced on behalf of appellant in which deed of will dated 26.08.2000 has been marked as Ext.1 and death certificate of testator Rajendra Mishra on 11.7.2001 has been marked as Ext. 2.

11. Three witnesses were examined on behalf of opposite party. OPW 1 is Anjani Kumar Jha (appellant), son of late Shakti Nath Jha. OPW 2 is Ramashankar Pd. Singh and OPW 3 is Usha Devi who have stated in their deposition that



testator Rajendra Mishra executed will in favour of Usha Devi (OPW3/ wife of OPW1) and thereafter never executed any other will. Applicant Ramakant Jha and his son Dinesh Jha came in village Fathehabad on 15.8.2000 and took LTI of testator Rajendra Mishra on four to five blank-sheets and fraudulently used the same to prepare the will.

12. Probate court on appreciation of the evidences led on behalf of parties, found that witnesses of applicant were cross-examined at length by the opposite parties in order to test their veracity but there is nothing in their cross-examination to disbelieve or discard their evidence and found their evidence to be trustworthy, reliable and credible whereas found the witnesses examined on behalf of opposite parties not to be trustworthy and has also observed that OPW 2 in his deposition has stated that testator Rajendra Mishra executed a will in favour of Usha Devi (OPW3) on 21.05.2000 in which he was an identifying witness but said will was never produced before the probate court. Even own brother of Anjani Kumar Jha, Ajay Kumar Jha has supported the case of applicant and not of his own brother.

13. The learned trial court on appreciation of evidence adduced concluded that applicant proved that the will



was duly executed by the testator in a sound disposing state of mind after fully understanding its content in presence of two attesting witnesses satisfying the requirement of Section 63 (c) of Indian Succession Act as well as Section 68 of Evidence Act and it was duly registered.

14. Thereafter, the onus to prove that the document was not a genuine shifted on opposite parties and on analysis of the evidence offered by opposite parties the learned trial court was of the view that the same was inadequate to dispel the validity of the will or any suspicious circumstances shrouding the execution of will and granted probate of the will to the applicant.

15. The opposite parties/appellants had pleaded that the will was obtained by playing fraud on the testator and if fraud is pleaded it is the party who alleges fraud has to establish it. The Apex Court in Jagdish Chand Sharma versus Narain Singh Saini (dead) through legal representative and others since reported in (2015) 8 Supreme Court Cases 615 has held in paragraph no.47 which is quoted below:-

“47. That a propounder has to demonstrate that the Will was signed by the testator and that he was at the relevant time in a sound disposing state of mind and that he understood the nature and effect of the disposition and further that he had put his signature to



the testament on his own free will and that he had signed it in presence of two witnesses who had attested it in presence and in the presence of each other, in order to discharge his onus to prove due execution of the said document was reiterated by this Court amongst others in Surendra Pal and Ors. (supra) It was held as well that though on the proof of the above facts, the onus of the propounder gets discharged, there could be situations where the execution of a Will may be shrouded by suspicious circumstances such as doubtful signature, feeble mind of the testator, overawed state induced by powerful and interested quarters, prominent role of the propounder, unnatural, improbable and unfair bequests indicative of lack of testator's free will and mind etc. In all such eventualities, the conscience of the Court has to be satisfied and thus the nature and quality of proof must be commensurate to such essentiality so much so to remove any suspicion which may be entertained by any reasonable and prudent man in the prevailing circumstances. It was propounded further that where the caveator alleges undue influence, fraud and coercion, the onus, however, would be on him to prove the same, and on his failure, probate of the Will must necessarily be granted if it is established that the testator had full testamentary capacity and had in fact executed it validly with a free will and mind. (emphasis is mine)

16. The probate court is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such



execution the testator had sound disposing mind or any suspicious circumstances existed at the time of execution of will. The Apex Court in case of Rabindra Nath Mukherjee and another versus Panchanan Banerjee (Dead) By Lrs. and others since reported in (1995) 4 Supreme Court Cases 459 has held in paragraph no.6 which is quoted below:-

“6. Insofar as the third circumstance is concerned, we may first observe that witnesses in such documents verify whether the same had been executed voluntarily by the person concerned knowing its contents. In case where a will is registered and the Sub-Registrar certifies that the same had been read over to the executor who, on doing so, admitted the contents, the fact that the witnesses to the document are interested loses significance. The documents at hand were registered and it is on record that the Sub-Registrar had explained the contents to the old lady. So, we do not find the third circumstance as suspicious on the facts of the present case.”

17. During pendency of present appeal, supplementary affidavit 25.06.2019 has been filed on behalf of appellant Anjani Kumar Jha that will dated 2.8.2000 executed by testator Rajendra Mishra in favour of Usha Devi, wife of appellant was executed prior to execution of will dated 26.08.2000 in favour of Ramakant Jha with respect to 12 kathas and for which application for grant of probate has been filed before the District Judge, Vaishali giving rise to probate case no.47 of 2015 which appears to have been filed after about 15



years of death of testator. However, this Court is not inclined to make any observation on merit of said probate case which shall be decided by probate court on its own merit and in accordance with law.

18. This Court does not find any illegality or irregularity in the judgment and decree passed by the Probate Court granting probate of will to the respondent/applicant and as such the appeal filed by the respondent/appellant is dismissed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.09.2019
Transmission Date	NA

