

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.307 of 2012

1. SIMLA DEVI W/O Radha Raman Singh, D/O Late Girwardhari Singh R/O Vill + P.O.-Masauraha, P.S.-Paliganj, Distt-Patna.
2. Bimla Devi W/O Jitendra Narayan Singh, D/O Late Girwardhari Singh R/O Vill P.O.-Masauraha, P.S.-Paliganj, Distt-Patna.
3. Punam Devi W/O Chandrama Sharma , D/O Late Girwardhari Singh R/O Vill +P.O.-Masauraha, P.S.-Paliganj, Distt-Patna.

... .. Appellant/s

Versus

RAM NANDAN SHARMA S/O Late Jaleshwar Singh (In The Probate Case) described as S/O Late Girwardhari Singh R/O Vill + P.O.-Masauraha, P.S.-Paliganj, Distt-Patna. At Present- New Tarachak, Danapur Cant, P.S.-Danapur, Distt-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mritunjay Kumar, Adv.
	:	Mr. Hansraj, Adv.
	:	Mr. Ram Ganesh, Adv.
For the Respondent/s	:	Mr. Shashi Shekhar Dvivedi, Sr. Adv.
	:	Mr. Shailendra Kumar Dvivedi, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 14-11-2019

Heard the parties.

2. This miscellaneous appeal has been filed by the Objectors appellants against the judgment and order dated 28.02.2012 passed by learned Additional District Judge-IVth, Patna, in Title Suit No. 18/2009 by which the application for grant of probate filed on behalf of applicant-respondents was allowed.

3. Applicant-respondent had filed a case under Section 276 of Indian Succession Act for grant of probate of will dated



22.04.1994 executed by Girwardhari Singh in favour of applicant/respondent.

4. Testator-Girwardhari Singh son of Jainath Singh was father of applicant who was married to late Lakhrajo Devi. Late Jainath Singh the grandfather of applicant had two sons Jaleshwar Singh and Girwardhari Singh. Girwardhari Singh had only one son Ramnandan Sharma the applicant and three daughters, namely, Simla Devi, Bimla Devi and Poonam Devi. (Objectors) Girwardhari Singh father of the applicant got married his daughters in his life time and they were residing in their matrimonial home.

5. Applicant Girwardhari Singh was employed in the Indian Postal Services. Testator-Girwardhari Singh died on 30.11.1994 leaving behind his widow Lakhrajo Devi and applicant and three married daughters as his legal heirs and representatives. The mother of applicant Lakhrajo Devi died on 21.04.2008. Girwardhari Singh prior to his death duly executed a will dated 24.04.1994 on his own volition and free will and without any coercion or undue influence in a sound disposing state of mind by which he had bequeathed his properties in favour of applicant. In his will he had made arrangement for his wife, so that she does not suffer any difficulty after his death.



6. Testator-Girwardhari Singh appointed applicant as executor of his duly executed last will dated 22.04.1994 and after death of testator applicant came in possession over the properties of late Girwardhari Singh to the knowledge of all. The details of properties has been enclosed in the schedule alongwith application for grant of probate of Will.

7. It was contended by the learned counsel for the applicant/respondent that the will was executed by Girwardhari Singh in the sound disposing state of mind in presence of two attesting witnesses satisfying the requirement of Indian Succession Act and Indian Evidence Act with respect to due execution of Will and he was fully aware of the nature of document and its consequences.

8. Three daughters of testator Girwardhari Singh, namely, Smt. Simla Devi, Smt. Bimla Devi and Smt. Poonam Devi were made parties in the application for grant of probate of Will being the near relative of deceased testator and they filed their objection against grant of will stating that propounder of the Will Ramnandan Sharma was not the son of Girwardhari Singh rather he was son of Jaleshwar Singh. There was no occasion for the late Girwardhari Singh to execute Will in favour of his only son as even otherwise the property would



have devolved upon him. Girwardhari Singh was not his father and he was nephew of testator.

9. The alleged will is forged and fabricated document and same was never read over and explained to testator nor he put his signature over it.

10. On the basis of rival pleadings of the parties, the probate court framed four issues for its determination:-

1. Is the suit for grant of probate of the Will of Late Girwardhari Singh maintainable?

2. Has the plaintiff got valid cause of action of the suit?

3. Is the document of will dated 22.04.1994 executed by late Girwardhari Singh legal, valid, genuine and was duly and voluntarily executed by Girwardhari Singh?

4. Is the plaintiff entitled to the relief as claimed in the suit?

11. The Probate Court is only concerned with the question as to whether the documents 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. In *Savithri v. Karthyayani Amma*, since reported in (2007)



11 SCC 621 in para 17, the Apex Court has held as follows:-

“17. The legal requirements in terms of the said provisions are now well settled. A will like any other document is to be proved in terms of the provisions of the Succession Act and the Evidence Act. The onus of proving the will is on the propounder. The testamentary capacity of the testator must also be established. Execution of the will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the will. It is required to be shown that the will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exist suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine.”

12. The will was executed by testator Girwardhari Singh in presence of two witnesses, namely, Rishikesh and Kumar Prakash who are the attesting witnesses of the Will. Both the witnesses have been examined on behalf of applicant as witness No. 1 and witness No. 2. Witness No. 1 Rishikesh has deposed that Girwardhari Singh got the deed of Will typed by Laxmi Narain Singh typist and then he put his signature on the will in presence of testator as attesting witness. He has also proved the will which has been marked as Exhibit-1. P.W. 2 Kumar Prakash was also an attesting witness of the will and has been examined on behalf of applicant as witness No. 2 who has



deposed about the execution of will by Testator-Girwardhari Singh in his presence and in presence of other witnesses. His signature on the will has been marked as Exhibit-2. He has proved the signature of other witnesses on will which are marked as Exhibit-2/A and 2/B. He has also proved the signature of Girwardhari Singh on all the seven pages of the will which has been marked as Exhibit 2/C to Exhibit 2/i. Both the witnesses were cross examined by the objectors but the trial court has held that they stood the test of cross examination and there is nothing in their cross-examination to disbelieve them and found the evidence of attesting witnesses to be reliable and trustworthy who have proved the due execution of will by the testator Girwardhari Singh.

13. The probate court has a limited jurisdiction in which genuinity and authenticity of the will is to be decided and the title of testator with respect to schedule properties of the will is not within the ambit and scope of probate court. The jurisdiction of probate court is limited to decide the due execution of will in accordance with the provisions of Indian Succession Act and Indian Evidence Act which mandates that the testator to execute the will in presence of two attesting witnesses in the sound disposing state of mind without any



undue influence or coercion and the execution of will is not shrouded by any suspicious circumstances.

14. Witness No. 1 Rishikesh in his examination in chief has stated that he is employed as a male peon in Postal department of Government of India and he is resident of village Masaurhi, P.S. Paliganj in the district of Patna where he has ancestral land and residence and he visits his native place and has cordial relations with villagers. He has stated that Girwardhari Singh had executed a will with respect to his properties in favour of his son Ramnandan Sharma with his free will and volition and he got the will drafted and typed and put his signature on each page in his presence and thereafter on his instruction and in his presence he put his signature on his will as an attesting witness.

15. The contents of will was drafted by Krishna Chandra Sharma, Advocate in his presence and same was typed by the Laxmi Narain Singh typist in Civil Court, Patna and thereafter same was read over in his presence and thereafter testator put his signature on each page and he and Satrugan Sharan and Kumar Prakash put their signature on the will in his presence. He deposed that at the time of execution of will testator in sound disposing state of mind. He has been cross-



examined by the objectors at length but there is nothing in the cross-examination to disbelieve his evidence rather his evidence appears to be reliable and trustworthy.

16. Kumar Prakash has been examined as witness No. 2 on behalf of applicant who has also supported the case of applicant with respect to due execution of the will in his presence and the will was read over and explained to the testator and after fully understanding the contents of the will he put his signature on each page of the will and at that time he was in sound disposing state of mind and thereafter on his instruction he put his signature on the will as a attesting witness. He has been cross-examined by the objectors at length but he stood the test of cross-examination and there is nothing in his cross-examination to disbelieve him. His evidence appears to be natural, reliable and trustworthy.

17. The Apex Court in the case of ***Pasupati Nath Das (Dead) Vs. Chanchal Kumar Das(Dead) by L.Rs. and Ors.*** since reported in ***2018(13) SCALE 486*** in para 12 has held as follows:-

“We must, at the outset, say that the scope of the matter arising from Probate proceedings is very limited. The scope of the matter is primarily and principally regarding the genuineness of the execution of the testament or Will. This part has been succinctly dealt with in a decision rendered by this Court in ***Krishna Kumar Birla v. Rajendra Singh Lodha and Ors*** since



reported in **(2008) 4 SCC 300**. Paragraphs 57 of the said decision spell out the scope of the enquiry in Probate proceedings as under:

57. The 1925 Act in this case has nothing to do with the law of inheritance or succession which is otherwise governed by statutory laws or the custom, as the case may be. It makes detailed provisions as to how and in what manner an application for grant of probate is to be filed, considered and granted or refused. Rights and obligations of the parties as also the executors and administrators appointed by the court are laid down therein. Removal of the existing executors and administrators and appointment of subsequent executors are within the exclusive domain of the court. The jurisdiction of the Probate Court is limited being confined only to consider the genuineness of the will. A question of title arising under the Act cannot be gone into the (sic probate) proceedings. Construction of a will relating to the right, title and interest of any other person is beyond the domain of the Probate Court.”

18. Applicant has been successful in establishing before the probate court that the will was executed by the testator in a sound disposing mind without any coercion and undue influence and with his free will and volition and the same was attested by two attesting witnesses satisfying the requirement of Indian Succession Act and Indian Evidence Act.

19. Objectors-appellant have also challenged the parentage of applicant in their objection petition stating that applicant-Ram Nandan Sharma is not son of Girwardhari Singh rather he is his nephew and is son of Jaleshwar Singh who died leaving behind his son applicant-Ram Nandan Sharma who wanted to grab the properties of Girwardhari Singh for which he



manufactured a forged and fabricated Will.

20. In support of their contention apart from adducing oral evidence, they have also produced documentary evidence which included rent receipts dated 10.01.2008 in the name of Mosmat. Lakhrazo Devi dated 10.01.2008 (Exhibit-A), signature of Girwardhari Singh on original deed dated 13.12.1971 (Exhibit-B), partition deed dated 14.07.1989 (Exhibit-C), certificate dated 11.08.2008 by Mukhiya (Exhibit-B), revised voter list (Exhibit-H) series.

21. In order to falsify the case of Objectors and to establish that Ram Nandan Sharma was son of Testator Girwardhari Singh apart from oral evidence several documentary evidence were also produced by the applicant which included family certificate dated 21.08.2008(Exhibit-3) original sale deed dated 19.08.1989 (Exhibit-4), certificate dated 17.06.2008 issued by Headmaster (Exhibit-5), ration card (Exhibit-6), original certificate of matriculation dated 01.12.1959 (Exhibit-7), voter lists (Exhibit-8 series), bans ghat cremation register dated 30.11.1994 (Exhibit-9), deed of exchange dated 13.12.1971 (Exhibit-10), pass-book of PLI dated 18.02.1964 (Exhibit-11).

22. Probate court on the basis of unimpeachable



documents and some of which were public documents produced by applicant held that it is established that Ram Nandan Sharma is son of testator Girwardhari Singh and disbelieved the documents produced by Objectors and found them not trustworthy. This court also concurs with the finding recorded by the probate court that applicant Ram Nandan Sharma has been successful in establishing of being son of testator- Girwardhari Singh and not his nephew as contended by the Objectors.

23. This Court after hearing the parties and considering the evidence and materials available on record, does not find any error or infirmity in the order passed by the trial court granting probate of Will in favour of applicant-respondent, accordingly, this miscellaneous appeal is dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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