

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.285 of 2012

SATYA NARAIN PD. GUPTA@ SATTO Sah @ Satya Prakash Prasad natural S/O Late Ram Chandra Prasad Bedil and adopted S/O Late Bhola Sah @ Halwai Resident of Mohalla -Kamasi Bazar Tola Commissionery, P.O.+ P.S- Sheikhpura, District- Sheikhpura.

... .. Appellant/s

Versus

1. JAI PRAKASH GUPTA S/O Late Ram Chandra Prasad Bedil Resident of Mohalla- Kamasi Bazar Now Commissionery, P.O.+P.S and District- Sheikhpura.
2. Kaushal Kumar Gupta, minor S/O Jai Prakash Gupta Under The Guardianship of his Father Jai Prakash Gupta Father Natural guardian well wisher and next friend.
3. Kamlesh Kumar Gupta minor S/O Jai Prakash Gupta Under The Guardianship of his Father Jai Prakash Gupta Father Natural guardian well wisher and next friend.
4. Vijay Prakash S/O Late Ram Chandra Pd. Bedil, respondent Nos. 1 to 4 are Resident Of Mohalla- Kamasi Bazar Now Commissionery, P.O+P.S and District- Sheikhpura.
5. Madhuri Devi W/O Kishore Pd. Sah and D/O Late Ram Chandra Pd. Bedil Resident Of Mohalla Dangalpara, P.O +P.S and District- Dumka, (Jharkhand).
6. Smt. Geeta Devi W/O Kanhai Lal and D/O Late Ram Chandra Prasad Bedil Resident Of Mohalla- Pachambha, P.S- Giridih, District- Giridih, Jharkhand.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Naresh Kumar Sinha, Adv
For the Respondent/s	:	Mr. Kameshwar Pd. Gupta, Adv
	:	Mr. Binod Kumar, Adv
	:	Mr. Ashok Kumar Gupta, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 03-05-2019

Heard the parties.

2. This appeal has been filed against the judgment and order dated 28.02.2012 passed by learned Additional District & Sessions Judge, F.T.C. IIIrd, Munger in Probate Case No. 3 of 2008 in which the learned court had allowed the Probate Case in



favour of respondent Nos. 1 to 3.

3. Briefly stated the facts of the case is that respondent No. 1 Jai Prakash Gupta filed Probate Case No. 3 of 2008 on behalf of his minor sons Kaushal Kumar Gupta (respondent No.2) and Kamlesh Kumar Gupta (respondent No. 3) in the court of learned District Judge, Munger on 02.05.2008 and same was transferred to the court of Additional District and Sessions Judge, F.T.C. IIIrd, Munger.

4. The case of petitioner/respondent is that Most. Parwati Devi wife of Late Bhola Saw had executed a registered will dated 22.05.2003 in favour of respondent Nos. 2 and 3 and that was the last will executed by the Testatrix. Petitioner Nos.2 and 3 /respondent Nos. 2 and 3 were minor at the time of execution of will under the guardianship of the petitioner No.1/respondent no.1.

5. The Testatrix Most. Parwati Devi died on 19.03.2008, she was issue-less and her husband had pre-deceased her. The husband of testatrix was also the only issue of his parents. After the death of the husband of testatrix, the testatrix inherited all the properties of her husband and she had also purchased some properties in her own name. After death of her husband on 19.01.2002 she executed the registered will on 22.05.2003 in the



name of petitioner Nos. 2 and 3. She had no issue and there was no successor of her, as such her brother Ramchandra Prasad Bedil was made opposite party in this suit. It was further submitted that before execution of will she had also donated 17 decimals of land through deed of endowment in favour of temple. She also sold some of her lands inherited by her to different persons and after sale purchasers came in possession of sold land. The remaining property of testatrix Parwati Devi as described in the schedule I of the probate was her property. Most. Parwati Devi died on 19.03.2008 and her husband had predeceased her on 19.01.2002. The registered will was filed in the court of District Judge for grant of letter of administration and which was numbered as Probate Case No. 3 of 2008.

6. Sole Opposite party Ramchandra Prasad Bedil, who is brother of executor of the will Parwati Devi, and father of respondent no.1 and grand-father of Respondent nos.2 and 3 appeared in the suit and filed his written statement in which he had supported the genuinenity and authenticity of the registered will and also stated that said will was the last will executed by the testatrix in favour of petitioner/respondent Nos. 2 and 3. The attesting witnesses of the said will appeared as witness in Probate case and on the basis of evidences led before the



Probate court the will was found to be true and genuine and there is finding of Probate court that the will dated 22.05.2003 under probate is genuine and last will executed by the testatrix.

7. Appellant was not a party in the Probate Case, he had filed application to be added as Intervenor party in the probate case on the basis of that he is the eldest son of sole opposite party Ramchandra Pd. Bedil and adopted son of Bhola Sah and Parvati Devi, however, his application for being added as the intervenor respondent in the case after death of sole respondent was rejected by the court below against which he had preferred Miscellaneous Appeal, however, during the pendency of said Miscellaneous Appeal the probate was granted to petitioner nos.2 and 3 /respondent nos.2 and 3, as such same became infructuous and thereafter he has challenged the order passed in Probate Case, in this appeal although he was not a party in probate case.

8. In this case, respondent No. 1 had already supported the genuinenity and validity of the will and the appellant who claims to be legal heir and son of deceased respondent cannot take a contrary stand which was taken by his predecessor (father) and his claim to be added as a party was rejected in the probate case. In probate case genuinenity of the will is to be



decided by the court, whether will was genuine and satisfies and fullfills the necessary ingredients as prescribed for execution of will for its declaration to be true and genuine by the court . Both the issues framed in the probate case were decided in favour of petitioner nos.1 to 3/respondent nos.1 to 3 and the probate case was allowed.

9. After going through the order passed by the court and material available in L.C.R., this Court does not find any error, illegality or any procedure irregularity in declaring the will to be genuine and there is presumption of correctness of registered will.

10. This Miscellaneous Appeal stands dismissed.

11. Let the L.C.R. be returned to the court concerned forthwith.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.05.2019
Transmission Date	NA

