IN THE HIGH COURT OF JUDICATURE AT PATNA
Test Case No.12 of 2016

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In the Goods of Late Dhirendra Mohan Das, s/o Late Surendra Mohan Das, resident of B.M. Das Road, P.O. Bankipur, P.S. Pirbahore, town and district Patna.

And

In the matter of an application under Section 273 and 276 of the Indian Succession Act for grant of Probate of the Will dated 16.12.1984

And

In the matter of;

1. Dr. Satyendra Mohan Das, son of Late Dhirendra Mohan Das.
2. Smt. Suchitra Das, wife of Dr. Satyendra Mohan Das.

Both are residents of B.M. Das Road, P.O.-Bankipur, P.S.-Pirbahore, Town and District- Patna-800004.

... ... Applicants

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Appearance :
For the Petitioner/s : Mr.Laxmi Narayan Das, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 08-02-2019

Heard learned counsel for the applicants.

This application has been filed for grant of probate of Will dated 16.12.1984 claiming to be the last Will testamented by late Dhirendra Mohan Das. In the application, it has been stated that late Dhirendra Mohan Das had testated the Will dated 16.12.1984 voluntarily in good physical health and sound state of mind, after understanding the contents of the Will, without any undue influence or coercion of anybody, in presence of three attesting witnesses, namely, (i) Shri R.N. Rudra, Chartered Accountant, Jamal Road, P.O.-Bankipur, P.S.-Kotwali, Town

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and District-Patna, (ii) Shri A.K. Sinha, Head of the Department of Chemistry, B.N. College, P.O.-Bankipur, P.S.-Pirbahore, Town and District-Patna and (iii) Shri Sandeep Kumar Mitra, Professor, Bihar College of Engineering, P.O.-Bankipur, P.S.-Pirbahore, Town and District-Patna.

Late Sheo Ram Dalmia died on 07.01.1988 at his residence at Patna leaving behind following near relatives (i) Dr. Professor Ajoy Kumar Das, 2/2B, Bangur Avenue, Block-A, P.O.-Bangur, P.S.-Lake Town, Kolkata-700055, (ii) Shri Manishi Mohan Das, P.84, Kalindi Housing Estate, P.O.-Kalindi, P.S.-Lake Town, Jessore Road, Kolkata-700089, (iii) Smt. Mridula Basak, wife of Lt.Col. Nani Gopal Basak, L/3, Karunamayee Estate, Salt Lake, P.O.-Bidhan Nagar, P.S.-Bidhan Nagar East, Kolkata-700091, (iv) Smt. Debjani Basak, wife of Shri Samarendra Basak, 45, River View Enclave, TELCO Colony, P.O.-TELCO WORK, P.S.-TELCO, Jamshedpur, (v) Himadri Shankar Basak, son of Late Nitya Nand Basak, Flat No. D/5 29/7, Ballygunge Park, P.O.-Ballygunge Park, P.S.-Karya, Kolkata-700019. It has been said that the testator was a Hindu governed by the Dayabhaga School of Hindu law. The testator was owner of the property and he had every right to execute the Will and he had executed the Will in favour of Dr. Satyendra

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Mohan Das and Smt. Suchitra Das, son and daughter-in-law. Only after his death, the Will came to the applicants and has been filed for the Probate. The case has been registered accordingly. The Court vide its order dated 20.01.2017 given direction to the applicants to take steps for publication of general citation in two daily newspaper, namely, Times of India in English and Dainik Jagran in Hindi and also to take steps for issuance of special citation to near relatives. Accordingly, the general citation was issued in two daily newspaper, namely, Times of India in English and Dainik Jagran in Hindi. All near relatives after receipt of the notice have filed their no objection along with their respective Vakalatnama through their respective Advocates.

In support of the case, the applicants have examined three witnesses, namely, Sandip Kumar Mitra @ S.K. Mitra as A.W.1, Dr. Satyendra Mohan Das as A.W.2 and Suchitra Das as A.W.3.

Altogether five documents have been exhibited. The original Will has been marked as Exhibit-1, the signature of testator has been marked as Exhibit-2, the signature of R.K. Rudra has been marked as Exhibit-3, signature of A.K. Sinha has been marked as Exhibit-3/1 and signature of Sandip Kumar

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Mitra has been marked as Exhibit-3/2.

A.W.1 Sandip Kumar Mitra @ S. K. Mitra has stated that Late Dhirendra Mohan Das was known to him since his childhood as close family friend. On 16.12.1984, he called him at his residence at B.M. Das Road and he stated that he has written a Will and he wants to execute the same. As per his request, he went to his house on 16.12.1984 where he found Shri R. N. Rudra and Shri A. K. Sinha were also present there from before. In presence of this witness and in presence of Shri R. N. Rudra and Shri A. K. Sinha, Late Dhirendra Mohan Das brought one hand written Will which was in his pen and in presence of all these persons, he read the contents of the said hand written Will and also made some correction at some places in the said Will. The Will has been recognized by this witness, which has been marked as Exhibit -1. After execution of the Will, he requested Shri R. N. Rudra to sign as witness on the Will and, at his request, Shri R. N. Rudra has put his signature in presence of this witness and in presence of A. K. Sinha. This witness has recognized the signature of Shri R. N. Rudra. Thereafter, he requested Shri A. K. Sinha to put his signature on the Will in presence of R. N. Rudra as well as in presence of the Testator and whereafter he requested the present witnesses to

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put his signature which has done. He recognized his signature and also recognized the signature of aforesaid two persons. At the time of execution of the Will, he was completely in good mental health and sound mind capable of understanding fully and was not under pressure from any corner.

A. W. 2 Dr. Satendra Mohan Das has stated that he is applicant no.1 and the applicant no.2 is his wife in this case. Both the applicants along with his son have been made beneficiaries in the Will. The testator was his father and the present applicant no.1 and applicant no.2 are the executors of the Will. The testator was governed by Dayabhaga School of Hindu Law, was permanent resident of B. M. Das Road, executed the Will. The said Will was written in his own handwriting. He has stated that. at the time of execution of Will, apart from the aforesaid witnesses, this applicant was also present. He has given details of all the attesting witnesses. He stated that notices were sent to the near relatives and after receiving the same they have filed no objection. He stated that no other application either for probate or letter of administration has been filed with regard to the Will in question. As the Will was all along in custody of his father till he died on 07.01.1988, after his death, the Will was not made available immediately to

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the applicants. The said Will came in the hands of applicant only sometime in January 2016, thereafter, the applicants have been advised to file the present case to grant of probate.

A.W. 3 Smt. Suchitra Das has stated that applicant no.1 is her husband. Both the applicants along with their son are beneficiaries of the Will of her father-in-law. The Will was executed on 16.12.1984 which was written in his handwriting relating to the property covered in the Will. At the time of execution of Will, R. N. Rudra (Chartered Accountant), A. K. Sinha (Retired Head of Department of Chemistry) and Shri Sandeep Kumar Mitra @ S. K. Mitra (Professor, Bihar College of Engineering) were present. The testator executed the Will in presence of this attesting Witness. All the attesting witnesses have also signed the Will at the request of Testator in presence of attesting witnesses. Shri R. N. Dura is not alive. She has recognized signature of testator and signatures of all the attesting witnesses on the original Will.

The order sheet itself discloses that general citations were issued in two daily newspaper, namely, Times of India in English and Dainik Jagran in Hindi and also notices were issued to near relatives and all near relatives have filed their no objection. The applicants have been examined as A.W.2 and A.

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W.3 as out of three attesting witnesses two attesting witnesses have already died and one S. K. Mitra, one of the attesting witnesses, has been examined as A.W.1 has narrated the fact that he was called by Late Dhirendra Mohan Das, who had prepared the Will on his own handwriting, in his presence and in presence of R. N. Rudra and A. K. Sinha after reading and understanding the contents of the Will put his signature which has been recognized and exhibited and, on the request of testator, all the three witnesses have put their respective signatures. A.W.2 has stated that the beneficiaries of the Will are applicants as well as his son governed by Dayabhaga School of Hindu Law. A. W.1 S. K. Mitra and A. W. 2 Dr. Satendra Mohan Das have stated that, at the time of execution of the Will, Late Dhirendra Mohan Das was in a good state of mind and fully understanding the contents, he had executed the Will.

In view of the aforesaid discussion, this Court is of the view that the aforesaid Will was executed by late Dhirendra Mohan Das properly in a good physical health and sound state of mind, after understanding the contents of the Will, without any undue influence or coercion of anybody, in presence of three attesting witnesses in favour of the applicants.

Accordingly, this application is allowed. Let the Letter

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of Administration/grant of probate of Will dated 16.12.1984 be issued in favour of applicants of this case with a copy of the Will annexed thereof, which shall have effect throughout the territory of India.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	12.02.2019
Transmission Date	N.A.

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