

IN THE HIGH COURT OF JUDICATURE AT PATNA
Test Case No.10 of 2015

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In the goods of late Narsingh Bhagat, son of late Rameshwar Bhagat, resident of village- Jaiyatipur, P.O.-Rampur, P.S.-Kahalgaon, District- Bhagalpur.

AND

In the matter of an application under Section 273 and 276 of the Indian Succession Act for grant of letter of administration of the Will dated 15.01.2009.

AND

In the matter of Ishita Priyadarshini @ Ishita, age 30 years, daughter of Sri Nirmal Kumar Jaiswal, resident of village-Jaitipur, P.O.-Rampur, P.S.-Kahalgaon, District- Bhagalpur.

.....Applicant

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Appearance :

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

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 08-02-2019

1. Heard learned counsel for the applicant.
2. The present application has been filed for grant of Probate / Letter of Administration of registered Will dated 15.01.2009 in her favour.
3. The property mentioned in the Will has been claimed to be a self acquired property of testator namely, late Narsingh Bhagat. The testator has died in Tata Main Hospital on 14.02.2009 leaving behind near relatives mentioned in paragraph no.7 of this application, namely, Nirmal Kumar Jaiswal, Binod Kumar Bhagat, Chandan Kumar Jaiswal, Shekhar Nilam Kumar and Mrs. Sudha Jaiswal. The applicant is the grand-daughter of late Narsingh Bhagat and the Will in



question is the last Will, testated on 15.01.2009 in good health and sound mind without any undue influence and in presence of three attesting witnesses, namely, Amar Nath Jaiswal, son of late Hanuman Prasad, resident of 108A, New Patliputra Colony, P.O.-Patliputra, P.S.- Patliputra Town, District- Patna, Aziz Maroof, son of late A.R. Ansari, resident of 3/331, New Patliputra Colony, P.O. + P.S.- Patliputra, Town and District- Patna and the applicant, namely Ishita Priyadarshani, daugther of Nirmal Kumar Jaiswal, resident of village- Jaitipur, P.O.- Rampur, P.S.-Kahalgaon, District- Bhagalpur, at present residing at Duplex No.110, Vijaya Heritage, 6th Phase, Marine Drive Road, Kadama, Jamshedpur.

4. After registration of the case, this Court vide order dated 29.07.2017 has directed for publication of General Citation in two daily newspapers, one in English and another in Hindi, namely, “The Times of India” and “Dainik Bhaskar”, respectively fixing 16th September, 2016 as next date of hearing and by the same order direction was issued to take steps for issuance of Special Citation to five Near Relatives, as mentioned in paragraph no.7 of the petition, both by ordinary process as well as under registered cover with A/D. The Special Citation could not be served upon Near Relative nos. 1, 4 and 5.



The case was listed on 17.03.2017, on that day, learned counsel for the applicant submits that Near Relative Nos. 1 and 5 have given power to him and he would file Power on their behalf within two weeks and for Near Relative Nos.4 order was passed to take steps for Special Citation under ordinary process as well as Speed post. The order dated 21.07.2017 reflects that No objection from and on behalf of Near Relative Nos. 1 and 4 was filed, which was accepted. The notice for Near Relative No.4 was received by his wife, treated to be a valid service. Accordingly, the witnesses were examined.

5. Witness no.1, namely, Amar Nath Jaiswal, in his evidence has stated that late Narsingh Bhagat was known to him. On 15.01.2009, he called this witness and one Aziz Maroof, disclosing that he was going to execute a Will and whereafter late Narsingh Bhagat brought a computerized typed Will and he himself read the same loudly in our presence and after reading the Will, late Narsingh Bhagat put his signature on each page of the Will in presence of this witness and Aziz Maroof. This witness further deposed that on the request of late Narsingh Bhat he put his signature on the last page of the Will as an attesting witness. This witness further deposed that at the time of execution of the Will, the testator was in a sound mind



and health condition and was also capable of understanding everything. This witness further deposed that the testator, namely, late Narsingh Bhagat died on 14.02.2009 in Tata Main Hospital, Jamshedpur.

6. Aziz Maroof, has been examined as A.W.-2, who has stated that late Narsingh Bhagat was known to him. On 15.01.2009, he called this witness and one Amar Nath Jaiswal, showing his intention that he was going to execute a Will, when he reached at the house of late Narsingh Bhagat, he found family members and Amar Nath Jaiswal were also present. Late Narsingh Bhat brought a computerized typed Will, which he himself read loudly and put his signature on each pages of the Will in presence of this witness and Amar Nath Jaiswal. The Will has been marked as Exhibit-1. Thereafter, on the request of testator, Amar Nath Jaiswal put his signature as one of the attesting witness on the last page of the Will. This witness further deposed that whereafter the testator requested this witness to put his signature on the Will, accordingly, this witness has put his signature on the last page of the Will.

7. The applicant, namely, Ishita Priyadarshini, has been examined as A.W.-3, has stated that late Narsingh Bhagat was my grand-father, my grand-father late Narsingh Bhagat was



governed by the Mitakshara School of Hindu Law. Her grand-father has executed the Will on 15.01.2009. At the time of execution of the Will, her grand-father called Amar Nath Jaiswal and Aziz Maroof to become attesting witnesses of his Will and thereafter he has executed the Will by putting his signature upon all the pages of the Will in presence of both the attesting witnesses. Whereafter, he requested Amar Nath Jaiswal and Aziz Maroof to put their signatures on the Will as attesting witness, accordingly, they have put their signatures on the last page of the Will. This witness further deposited that at the time of execution of the will, the testator was in good health and sound mind and he has executed the Will after fully understanding the contents of the Will without any undue influence from any corner. She further deposed that the testator died on 14.02.2009.

8. In this case, notices were issued from this Court and after receipt of the same, no objection was filed for grant of Probate / Letter of Administration of registered Will. The Will, in question, remained in possession of the testator, namely, late Narsingh Bhagat till his lifetime, only after his death the Will came in possession of the applicant. The property, in question, was acquired by the grand-father of the applicant, he has every



right to bequeath the property as per his desire.

9. On perusal of the record, it appears that General Citations in two daily newspapers one in Hindi and another in English were published as well as notices have been served upon near relatives, no one has come forward to raise objection to grant of Probate / Letter of Administration in favour of the applicant. Three witnesses have specifically stated that late Narsingh Bhagat at the time of testation of the Will was in a good state of health and sound mind and he has executed the Will without any pressure and influence from any corner rather out of love and affection he has voluntarily executed the Will in favour of the applicant. It also appears that the property of the Will is self acquired property of late Narsingh Bhagat and he has every right to bequeath the property as per his own desire in favour of this applicant and in pursuance thereof, late Narsingh Bhagat has testated the Will on 15.01.2009 in favour of the applicant.

10. On analysis of the evidence which have been deposed by the witnesses, it is very much clear that late Narsingh Bhagat out of love and affection without any coercion and pressure and after fully understanding the contents of the



Will has put the signature on each and every page to the Will and on his request the attesting witnesses put their respective signatures in the body of the will, which has been proved by the witnesses as discussed herein-above.

11. Accordingly, this application is allowed. Let the Letter of Administration / grant of probate of Will dated 15.01.2009 be issued in favour of applicant of this case with a copy of the Will annexed thereof, which shall have effect throughout the territory of India.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	11.02.2019
Transmission Date	

