

IN THE HIGH COURT OF JUDICATURE AT PATNA
Test Case No.1 of 2016

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In the Goods of Late Sheo Ram Dalmia son of late Bishwanath Dalmia resident of 12, Krishna Prakash Road, P.O. G.P.O. Gaya, P.S. Kotwali, town and district Gaya.

And

In the matter of an application under Sections 273 and 276 of the Indian Succession Act for grant of Probate of the Will dated 19.04.2014

And

In the matter of Usha Devi Dalmia, aged about 65 years, widow of Sheo Ram Dalmia, resident of 12, Krishna Prakash Road, P.O. G.P.O. Gaya, P.S. Kotwali, town and district Gaya

... .. Applicant

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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 : 8-02-2019

Heard learned counsel for the applicant.

This application has been filed for grant of probate of Will dated 19.04.2014, which is the last Will testamentary by late Sheo Ram Dalmia. In the application, it has been stated that late Sheo Ram Dalmia had testated the Will dated 19.04.2014 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 two attesting witnesses, namely, (i) Smt. Aparna Seksaria, wife of Vivek Seksaria, aged about 46 years, resident of Poddar House, 5th Floor, 10 Marine Drive, P.O. & P.S.-Marine Drive, Mumbai and (ii) Smt. Gopika Agarwal, wife of Pankaj Agrawal, aged about



33 years, resident of 151, Jolly Maker-3, P.O.-Colaba, P.S.-Cufferparade, Mumbai.

Late Sheo Ram Dalmia died on 25.11.2014 at Gaya leaving behind following near relatives (i) Archana Agarwal, wife of Manish Agrawal, residents of 34, Cariappa Road, Cantt. P.S.-Cantt, Kanpur, (ii) Anuja Agarwal Lohia, wife of Anuraag Lohia, residents of Saket, 3-A/88, Azad Nagar, P.O. & P.S.-Nawabgunj, Kanpur (iii) Aparna Vivek Seksaria, wife of Vivek Seksaria, resident of Poddar House, 5th Floor, 10 Marine Drive, Mumbai and (iv) Gopika Pankaj Agrawal, wife of Pankaj Agrawal, resident of 151 Jolly Maker-3, Cufferparade, Mumbai. It has been said that the Testator was a Hindu governed by the Mitakshara School of Hindu law. Testator had kept the Will all along with himself till his lifetime. Only after his death, the Will came to the applicant 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 applicant 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, three witnesses have been examined. The applicant has been examined as A.W.1, Smt. Gopika Agarwal has been examined as A.W. 2 (attesting witness) and Smt. Aparna Seksaria has been examined as A.W. 3 (attesting witness).

Altogether four documents have been exhibited. The original document has been marked as Exhibit-1, the signature of testator has been marked as Exhibit-2, the signature of A.W.2 Gopika Agrawal has been marked as Exhibit-2/1 and signature of A.W. 3 Aparna Seksaria has been marked as Exhibit-2/2.

The applicant has stated that she is the wife of late Sheo Ram Dalmia and she is the only applicant for grant of probate of Will dated 19.04.2014. The Will was testated in presence of Smt. Aparna Seksaria and Smt. Gopika Agarwal and they have also attested the same. She has recognized the signatures of attesting witnesses, namely, Smt. Aparna Seksaria and Smt. Gopika Agarwal, who are daughters of the applicant and they were put their signature in her presence and in presence of her husband. At the time of execution of the Will,



the husband was good health and sound mind. Notices were given to all near relatives but they have not raised any objection for grant of probate in the present case.

A.W. 2 Gopika Agarwal has stated that late Sheo Ram Dalmia was her father had testated the Will dated 19.04.2014 by putting his signature and also thumb impression in her presence and in presence of her sister Aparna Seksaria. She recognized the thumb impression and signature of testator and after execution of the Will, her father requested this witness and Aparna Seksaria to sign the Will and one by one they put their signature as attesting witnesses in presence of father and in her presence. After her signature, father had requested another daughter Aparana Seksaria to become attesting witness and she put her signature in presence of the witnesses. Before execution of the Will, the testator had read the contents of Will in her presence and he after understanding the contents of the Will put his signature and thumb impression. At the time of execution of the Will, he was in good mental condition capable to understand contents of Will, accordingly, he executed the Will out of free will and without any pressure from any corner and the father (Testator) had died on 25.11.2014 at 11.00 P.M. at his residential house at Gaya.



A.W. 3 Aparna Seksaria has stated that late Sheo Ram Dalmia was her father had testated the Will dated 19.04.2014 by putting his signature and also thumb impression in her presence and in presence of her sister Gopika Agarwal. She recognized the signature and thumb impression of testator Late Sheo Ram Dalmia and after execution of the Will, her father requested this witness to sign the Will as one of attesting witness. Upon his request, this witness had put signature as attesting witness in presence of her father and her sister Gopika Agarwal. She recognized her own signature and, thereafter, requested Gopika Agarwal to sign the Will as another attesting witness, whereupon she put her signature in presence of father and in presence of this witness which she has recognized. It has been stated that the testator after understanding the contents of the Will, put his signature and thumb impression. On the date of execution of the Will, he was in good mental condition and capable to understand the contents of the Will and, accordingly, he executed the Will out of his own free will and without any pressure from any corner and father (Testator) had died on 25.11.2014 at 11.00 P.M. at his residential house at Gaya.

The order 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 daughters are the attesting witnesses. They have supported the attestation of the Will in their presence and also stated that mental condition of their father was completely good, to capable of understanding the contents of the Will put his signature as well as thump impression which has been recognized by both the daughters, who are attesting witnesses before the Court.

In view of the aforesaid facts and circumstances, it is clear that late Sheo Ram Dalmia had testated the Will in favour of his wife in presence of two attesting witnesses, both are daughters of Late Sheo Ram Dalmia and, after fully understanding the contents, he had put his signature and thumb impression and requested both the daughters to become the attesting witnesses and in his presence, both the daughters one by one put their respective signatures, which have been recognized by the respective witnesses.

In such view of the matter, this Court is of the view that the Will was executed properly in a proper state of mind after understanding the contents by Late Sheo Ram Dalmia in favour of his wife.



Accordingly, this application is allowed. Let the Letter of Administration/grant of probate of Will dated 19.04.2014 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)

V.K.Pandey/-

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

