

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.309 of 2011

Meena Devi W/o Bachchu Yadav, d/o Late Ganauri Yadav, resident of village Barpura, police station and P.O. Nawada, District- Nawada, At present resident of village Barchhi Bigha, police station Giriyak, District- Nalanda.

... .. Appellant/s

Versus

1. Smt. Amol Devi W/o Ramashish Yadav, D/o Late Ganauri Yadav, Resident of village Ballaur, police station Rajgir, District- Nalanda. At present resident of village Ghorahi English Tola, Barchhi Bigha, police station Giriyak, District- Nalanda.
2. Ram Barti Devi W/o Late Ganauri Yadav, resident of village- Ghorahi English Tola, Barchhi Bigha, police station Giriyak, District- Nalanda.
3. Vidya Devi W/o Arjun Yadav d/o Late Ganauri Yadav, resident of village Puraini, police station Giriyak, District- Nalanda.
4. Murga Devi W/o Kishori Yadav, d/o Late Ganauri Yadav, resident of village- Parma, police station Nardiganj, District- Nawada.

... .. Respondent/s

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 09-05-2019

Heard the parties.

2. This miscellaneous appeal is for setting aside the judgment and order dated 01.07.2010 passed by 1st Additional District Judge, Nalanda at Biharsharif passed in Title Suit No. 2 of 2007 granting Probate to respondent No. 1 for the will dated 11.01.77 executed by Ganauri Yadav in favour of Amol Devi.

3. Briefly, stated the facts of the case is that Ganauri Yadav had four daughters, namely, Meena Devi, Amol Devi, Bidwa Devi and Suga Devi and one wife Ram Barti Devi and it is stated that on 11.01.1977 a joint will was executed by Ganauri Yadav alongwith his wife Ram Barti Devi in favour of Amol



Devi, one of their daughter, out of love and affection and services rendered by her which is the last will of one of the Testator Ganauri Yadav, another testator Ram Barti Devi was still alive, and after understanding the contents of the will he put his LTI in presence of attesting witnesses Dhanushdhari Chaudhary, Bhagwat Mahto and Ramanand Prasad. The will was registered. Ganauri Yadav died on 31.01.77.

4. The Probate case filed on behalf of respondent No. 1 was opposed by remaining three daughters as well as |Ram Barti Devi, widow of Ganauri Yadav, who is also one of the testator of the will and it has been stated that no such will was ever executed by Ganauri Yadav. It was further alleged that Ganauri Yadav was seriously ill and had lost his mental capacity and taking advantage of which in collusion with others, collusive will was executed by manipulation and playing fraud. During life time of Ganauri Yadav his two daughters Meena Devi and Amol Devi were married whereas Suga Devi and Bidwa Devi were unmarried. The application for grant of probate was pre-matured as one of the testator Ram Barti Devi was still alive.

5. In a probate proceeding the applicants have to satisfy that will is genuine and validly executed by the testator in a sound state of mind without undue influence or coercion



and same is attested by two witnesses.

6. P.W. 1 Dhanushdhari Chaudhary is one of the attesting witnesses and has also identified the LTI of Ganauri Yadav and Ram Barti Devi on the will who has stated that being pleased with the services of Amol Devi her father Ganauri Yadav and mother Ram Barti Devi jointly executed registered will in respect of their property which was scribed by Sidheshwar Nath and the contents of the will was read over to Ganauri Yadav and Ram Barti Devi and thereafter they put their LTI in his presence and he signed on behalf of Ganauri Yadav and his wife Ram Barti and witness Bhagwat Mahto put his LTI in his presence and in presence of scribe Sidheshwar Nath. P.W. 2 Kuldip Yadav has stated that Ganauri Yadav was in a fit state of mind at the time of execution of will, however, he was not present there. P.W. 3 is Amol Devi who has stated that on account of services rendered by her, her father was pleased and executed will in her favour. One of the attesting witness Bhagwat Mahto was dead. P.W. 4 Ramashish Yadav has stated that Ganauri Yadav had executed registered will dated 11.01.77 in favour of Amol Devi.

7. D.W. 1 is Ram Barti Devi who has denied any execution of will by her Late husband Ganauri Yadav or by her.



She refused to compare her LTI available on the will. D.W. 2 Bidwa Devi has denied execution of will. D.W. 3 Meena Devi has stated that her father had lost consciousness prior to his death. D.W. 4 Banke Prasad Yadav has stated that Amol Devi never served her father Ganauri Yadav who lost his consciousness during his last days. D.W. 4 Banke Prasad Yadav, D.W. 5 Ram Chandra Yadav were also examined by the Objectors.

8. The probate court had framed eight issues and on appreciation of evidences adduced by the parties and materials available on record allowed the application filed on behalf of respondent No. 1 and found the registered will jointly executed by one of the testator Ganauri Yadav to be genuine and has further held that even in case of joint will probate can be granted after death of one of the testator of the will and accordingly allowed the application for grant of will in favour of applicant/respondent No. 1.

9. It is an admitted fact that will was executed on 11.01.1977 and testator Ganauri Mahto died on 11.01.1977 however, application for grant of probate was filed on 04.04.2007 but no explanation has been given for such inordinate delay in filing application for grant of probate. It is a



settled preposition of law that residuary article 137 of limitation act is applicable in cases of grant of will or succession certificate and same is to be filed within three years from the date when right to file application for grant of will accrues. In present case the application for grant of will was filed much beyond the period of limitation when the right to sue accrued to the applicant and cause of action had arisen, as such the application was time barred and was fit to be dismissed on the ground of limitation.

10. In the result, the miscellaneous appeal is allowed and the application filed by applicant/respondent No. 1 for grant of probate of will is dismissed being barred by law of limitation.

11. Let the L.C.R. be immediately returned to the court below.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.06.2019
Transmission Date	NA

