

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.624 of 2011

- 1.(a) Most. Savitri Devi, wife of late Yogendra Nath Mishra
(b) Manoj Kumar Mishra, S/o late Yogendra Nath Mishra
Btoh R/o village- Painal, P.S. Bihta, Dist, Patna
(c) Smt. Usha Devi, D/o late Yogendra Nath Mishra and w/o Om Prakash
Mishra , R/o Dhanuki Jagpura, P.S. Makhdumpur, Dist- Jehanabad
(d) Smt. Manju Devi, D/o late Yogendra Nath Mishra and W/o Sri Nipun
Mishra, R/o village + P.O. Jalalpur, P.S. Tekari, Dist- Gaya
(e) Smt. Sudha Devi, D/o late Yogendra Nath Mishra and w/o Sri Jitendra
Mishra, R/o village + P.O. Shiv Chandpur, P.S. Bihta, Dist. Patna

... Plaintiff/applicant ... Appellant/s

Versus

1. Smt. Savitri Devi, w/o Sri Ram Pujan Mishra, R/o village- Goplapur,
P.S. Naubatpur, District, Patna at present residing at village
Mahmadpur, P.O. Painal, P.S. Bihta, District, Patna
2. Sri Nagendra Mishra
3. Sri Surendra Mishra, Both sons of late Pitambar Mishra
4. Sri Anil Mishra, S/o late Raj Deo Mishra
5. Nand Kishore Mishra
6. Subhash Mishra
Both sons of late Rajendra Mishra,
All residents of village- Painal, P.S. Bihta, District, Patna

Defendants/ Opposite parties Respondent/s

Appearance :

For the Appellant/s	:	Mr.Pushkar Narain Shahi, Sr. Advocate Mr. Manish Kumar Mr. Sanjeet Kumar Singh, Advocates
For the Respondent no.1 :		Mr. D. K. Sinha, Sr. Advocate Mr. Bajarangi Lal, Advocate

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT

Date : 01.10.2019

Heard the parties.

2. This appeal has been filed under Section 299 of Indian Succession Act, 1925 for setting aside the judgment dated 11.06.2010 and decree dated 21.06.2010 passed by the learned Additional District and Sessions Judge, XIII, Patna in Title Suit No.18/2005 / 2/2009 (arising out of Letters of



Administration case No.10/2005) by which learned court below has dismissed the application of applicant/appellant for grant of letter of administration.

3. Applicant/appellant had filed an application for grant of letter of administration with respect to estate of late Ram Pari Kuer wife of late Ram Bhagwan Mishra who pre-deceased her in the year 1954. There was no issue born from the said wedlock. She had great affection for applicant /appellant -Yogendra Mishra who is her nephew and she bequeathed her estate by a registered will dated 7.11.2002 in presence of two attesting witnesses, Surendra Mishra and Satyendra Mishra both of whom attested the will in her presence on her instruction. The will was scribed by Pappu Yadav @ Rakesh Kumar and was typed by Chandra Shekhar Prasad and the same was read over and explained to her and after fully understanding the contents of will, she duly executed the will by putting her LTI on all pages of will. She presented and accepted execution of the will before the Registrar, Danapur.

4. In the application for grant of will, near relatives of testatrix, who are descendants of own brothers of husband of testatrix have been made parties. Husband of testatrix Ram Pari Devi were three brothers namely, Pitamber Mishra (1st branch),



Bhagwan Mishra (2nd branch) and Ram Bhagwan Mishra (3rd branch).

5. Defendant no.1 Savitri Devi is daughter of Late Ram Bhagwan Mishra (3rd branch) and Ramdasi Devi and has contested the proceeding and filed objection against grant of Letters of Administration to the applicant/appellant.

6. Whereas defendant no.2 Nagendra Mishra and defendant no.3 Surendra Mishra, both sons of late Pitamber Mishra, (1st branch), defendant no. 4 Anil Mishra son of late Rajdeo Mishra and grand-son of Late Pitambar Mishra (1st branch) and defendant no.5 Nand Kishore Mishra and defendant no.6 Subhash Mishra, both sons of late Rajendra Mishra and grand-son of Bhagwan Mishra (2nd branch) were made parties who have supported the case of applicant/appellant for grant of Letters of Administration to the applicant/appellant.

7. Notices with respect to general citation as well as upon relatives were issued upon which, Surendra Mishra and Anil Mishra, son and grand-son of late Pitambar Mishra (1st Branch), jointly filed their written statement on 07.06.2005 in support of applicant/appellant stating therein that partition of joint family property took place in the year 1990 among sons of Pitambar Mishra (1st branch) and Bhagwan Mishra (2nd Branch)



and Ram Pari Kuer (3rd Branch) by metes and bounds and lands were separately mutated. Nand Kishore Mishra and Subhash Mishra, both sons of late Rajendra Mishra and grand-son of Bhagwan Mishra (2nd branch) in their joint statement supported the case of applicant/appellant.

8. Application of appellant/applicant was contested by Savitri Devi (3rd Branch). She pleaded that applicant is the son of late Bhagwan Mishra (2nd branch) and Ram Pari Devi. Ram Bhagwan Mishra (3rd branch) died on 21.06.1966 leaving behind his daughter, Savitri Devi (objector) and her mother Ram Dasi Devi had pre-deceased her father Ram Bhagwan Mishra on 15.05.1954, as such, the entire property devolved on her being the sole legal heir.

9. Most. Rampari Devi was not the wife of Ram Bhagwan Mishra (3rd branch). The alleged will was executed by Ram Pari Devi, the mother of applicant who was wife of late Bhagwan Mishra (2nd branch). Ramdasi Devi, wife of Ram Bhagwan Mishra never executed any will in favour of the applicant / appellant / Yogendra Nath Mishra.

10. On the basis of rival pleadings of the parties, the trial court framed six issues for its determination. The point for determination in this appeal is (i) Whether registered will dated



7.11.2002 executed by late Ram Pari Kauer in favour of plaintiff Yogendra Nath Mishra is genuine, valid, legal and operative. (ii) Whether the execution of will was shrouded under suspicious circumstances.

11. The Apex Court in case of Ramesh Verma Vs. Lajesh Saxena since reported in 2017(1) SCC 257 in paragraph 13 and 14 has held as follows:-

“13. A will like any document is to be proved in terms of the provisions of Section 68 of the Evidence Act and the Succession Act, 1925, The propounder of the will is called upon to show by satisfactory evidence that the will was signed by the testator, that he understood the nature and effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the



document in the written statement.

14. In Savithri V. Karthayayani Amma this Court has held as under: (SCC p. 629, para 17)

“17.....A will like any other documents to be proved in terms of the provisions of the Succession Act and the Evidence Act. The onus of proving the will is on the propounder. The testamentary capacity of the testator must also be established. Execution of the will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the will. It is required to be examined for the purpose of proving the execution of the will. It is required to be shown that the will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the will in the presence of two witnesses who attested his signature in his



presence or in the presence of each other. Only when there exists suspicious circumstance, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine.”

12. Yogendra Nath Mishra the applicant has been examined as witness no.5. He has deposed that the registered deed of Will dated 07.11.2002 was executed by his aunty Rampari Kunwar with free will in his favour and he has filed an application for grant of letter of administration. His aunty Late Rampari Kunwar died on 29.09.2004. She was wife of late Rambhagwan Mishra. Both had no children. My uncle were three brothers Pitambar Mishra, Sri Bhagwan Mishra and Rambhagwan Mishra. His uncle Rambhagwan Mishra died in 1954. Separation among three took place in 1990. His aunty Late Rampari Kunwar had great affection and treated him like her son and he also respected and served her. The last rites was performed by him. Rampari Kunwar executed a deed of Will in his favour in a fit state of mind and body and with free will. He has produced the original deed of Will which was given to him by late Rampari Kunwar. The execution of Will in his favour was known to everyone of his family and relatives. The



registered deed of Will dated 07.11.2002 has been marked as exhibit-1 which was executed by Rampari Kunwar, after the contents being read over to her by the deed writer and typist and after understanding the contents of Will she put her L.T.I. with her free will and without any coercion. On the instruction of Rampari Kunwar the Will was drafted by deed writer Pappu Yadav and typed by Chandra Shekhar Prasad typist. Witnesses were Surendra Mishra, Satendra Mishra and Sanjay Kumar and Surendra Mishra also identified her. He has denied that he presented his mother or some other lady as Rampari Kunwar and got the deed of Will registered. Her mother died six months after his birth.

13. He has further deposed that Raghubansh Mishra was his grand-father. His father were three brothers. Pitambar Mishra, Bhagwan Mishra and Rambhagwan Mishra. Pitambar Mishra had three sons Rajdeo, Nagendra and Surendra. Bhagwan Mishra had two sons he (applicant) and Rajendra Mishra. Rambhagwan Mishra had one daughter Savitri Devi (objector). The name of wife of Rambhagwan Mishra is Rampari Kunwar. His father married twice, first wife was Tara Devi from whom one son Rajendra Mishra was born, second wife was Shiv Kumari Devi, who is his mother.



14. Title Suit No. 77 of 2003 is pending in the court of Sub-Judge-III, Danapur in which written statement has been filed. He knows Binda Devi and Tara Devi both are sisters. Binda Devi was wife of Pitamber Mishra and Tara Devi was first wife of Bhagwan Mishra. Rampari Devi was wife of Rambhagwan Mishra. He has denied that Rampari Devi was his mother. Deed of Will was executed on 07.11.2002 and apart from execution of will one sale deed was also executed by her on same day. Rampari Devi died on 29.09.2004. He has denied that the Will is forged and he has misrepresented Rampari Devi as his aunt.

15. Satyendra Mishra (attesting witness) has been examined as witness no.1 on behalf of the the applicant. He has deposed that the applicant is his cousin brother and late Ram Pari Kuer was her *phuwa* who was married to late Ram Bhagwan Mishra and were issueless. Ram Bhagwan Mishra pre-deceased his wife Ram Pari Kuer (testatrix) who had great affection for Yogendra Mishra who used to serve her and also took her to visit religious places. She had executed the registered will dated 7.11.2002 with respect to her property in favour of applicant and at the time of execution of will she was in a fit state of mind and body. On the instruction of Ram Pari



Kuer, the will was scribed by Pappu Yadav @ Rakesh Kumar in his presence and in presence of other witnesses which was typed by typist Chandra Shekhar Prasad. After the will was typed, the contents of the will were read over and explained to Ram Pari Kuer in their presence and after having understood the contents of will, she put her LTI. Ram Pari Kuer was identified by Surendra Mishra, son of late Pitambar Mishra in his presence. On the said registered will, there were photographs of Ram Pari Kuer and Yogendra Mishra. The will was presented before the Registrar and was executed by testatrix in his presence which was marked as Ext.1 by the court. Ram Pari Kuer died on 29.09.2004 and her last rites were performed by applicant / Yogendra Mishra at his own expense. He knows Ram Bhagwan Mishra and name of his wife is Ram Pari. Name of husband of Savitri Devi (objector) is Ram Pujan. He is not aware of how many marriages were performed by Ram Bhagwan Mishra. Her *phuwa* was married with Ram Bhagwan Mishra who was his second wife. He put his signature on the will as attesting witness.

16. Sanjay Kumar (attesting witness) has been examined as witness no.2 on behalf of the applicant. He deposed that Ram Pari Kuer was known to him. Her maternal



house was in his village and she was married to late Ram Bhagwan Mishra. They were issueless. On 7.11.2002, Ram Pari Kuer executed a registered deed of will in favour of his nephew Yogendra Mishra. The will was executed in a fit state of mind and body which was scribed by Pappu Yadav @ Rakesh Kumar in the registry office at Patna. Said scribe had read over the contents of will to Ram Pari Kuer in his presence and in presence of other witnesses and after understanding the contents of will on her instruction, typist, Chandra Shekhar Prasad typed the will and contents of will was again read over to her and after understanding the same, she put her LTI on the Will in his presence and presence of others. On the instruction of Ram Pari Kuer, Surendra Mishra identified her. He also put his signature as a witness at the instance of late Ram Pari Kuer. He has identified his signature on the will. At the instance of Ram Pari Kuer, Satyendra Mishra also put his signature as witness on the will. The draft copy was destroyed. The scribe and typist also put their signature on the last page of will. On the date of death, he had also gone to Bans Ghat. He saw Surendra Mishra at Bans Ghat. Satyendra Mishra was also there. He knows Yogendra Mishra and Surendra Mishra and Ram Bhagwan Mishra. Yogendra Mishra used to come to his maternal house.



Ram Pari Kuer was issueless. He has heard the name of Bhagwan Mishra. He cannot say how many marriages were solemnized by Bhagwan Mishra. He cannot say how many children he had. Bhagwan Mishra were three brothers. He had seen the will on the date of registration. He does not remember the name of scribe. There was one stamp which was purchased by Ram Pari Kuer. He put his signature at one place of the will. Identifier was Surendra Mishra and witness was Satyendra Mishra who had signed the will. Scribe also put his signature. He is the priest of Satyendra Mishra. He does not remember that will has been executed by the mother of Yogendra Mishra. He has denied that name of wife of Ram Bhagwan Mishra is Ramdasi Devi and one daughter Savitri Devi was born from said wedlock. He does not know that name of husband of Savitri Devi as Rampujan Mishra and her native village is Shikhar Gopalpur.

17. Surendera Mishra (identifier) has been examined as witnesses no.3 on behalf of the applicant. He has deposed that applicant of this case Yogendra Mishra @ Yogendra Nath Mishra is his cousin brother and name of his father is Bhagwan Mishra. Late Ram Pari Kuer, wife of late Ram Bhagwan Mishra was his aunt. She died on 29.09.2004 in



village Painal. She had no issue of her own. Her last rites were performed by Yogendra Mishra who used to look after Ram Pari Kuer. He also took her to religious places. Ram Pari Kuer treated Yogendra Mishra like her son and after being pleased with his services, she wanted to give her property to him. There was partition in the family and Ram Pari Kuer executed deed of will in favour of Yogendra Mishra on 07.11.2002. The deed of will dated 07.11.2002 was scribed on the instruction of his aunt Ram Pari Kuer, by Pappu Yadav @ Rakesh Kumar in the *baithaka* of Patna registry office the contents of Will were read over in his presence and presence of other witnesses and, thereafter, it was typed by the typist Chandra Shekhar Prasad after being typed, the contents was again read over to Ram Pari Kuer in their presence and, thereafter, Ram Pari Kuer put her LTI on each page and he identified her signature on her instruction. Satyendra Mishra and Sanjay Kumar became the attesting witnesses on the instruction of Ram Pari Kuer in his presence. The scribe and typist put their signature on the last page of will. The will was presented before the Registrar and she accepted the execution of will in presence of Registrar and he identified her in presence of Registrar and both of them put their LTI and signature in the registry office. In the will on the



first page and back side of first page, photograph of his aunt Ram Pari Kuer was pasted. He has denied that the will was not executed by Ram Pari Kuer and in place of Ram Pari Kuer, Yogendra Mishra presented her mother and got prepared the forged will. Shiv Kumari Devi, mother of Yogendra Mishra died much prior before his birth. He has denied that husband of Ram Pari Kuer was not Ram Bhagwan Mishra. Ram Bhagwan Mishra performed two marriages and his first wife was Ramdasi Devi and second wife was Ram Pari Kuer. He deposed that in front and back of first page of Will both photographs are of Rampari Kunwar. He had identified Rampari Kunwar and his signature on the first page of Will and also on the back of the first page. He deposed that he knows Rampujan Mishra who is present in the court and he is elder to him. Name of his wife is Savitri Devi, who is daughter of Rambhagwan Mishra. My father were three brothers Pitambar Mishra, Sri Bhagwan Mishra and Ram Bhagwan Mishra. Rajendra Mishra and Yogendra Mishra (appellant) are step brothers. Rajendra Mishra has two sons Nand Kishore Mishra and Subhash Mishra. Yogendra Mishra has one son Manoj Mishra. He has denied that the name of mother of Yogendra Mishra is Rampari Devi. There has been partition among brothers. There is deed of



partition on which there are signature of all co-sharers. The day Will was prepared no other documents was prepared subsequently said that sale deed was prepared in the name of Yogendra Mishra. There were 5-6 persons present where Will was prepared. Ram Pari Kunwar, Yogendra, Sanjay Kumar were present. He had denied that the Will and the sale deed are forged and Rampari Devi is mother of Yogendra Mishra. He has denied that the name of wife of Rambhagwan Mishra was Ramdasi Devi and name of her daughter is Savitri Devi. Ramdasi Devi was his first wife.

18. Chanda Shekhar Prasad was examined as witnesses no.4 on behalf of applicant, He deposed that he is typist working in Patna Collectorate. Registered Will dated 07.11.2002 which was executed by Ram Pari Kunwar in favour of Yognedra Mishra was typed by him on the instruction of Rampari Kunwar. Draft was prepared by deed writer Pappu Yadav and he typed said draft of Will. After typing he read over the contents of Will to Rampari Kunwar and after hearing and understanding she put her L.T.I. on the Will. He has identified the signature of deed writer Pappu Yadav @ Rakesh Kumar on the last page of Will.



19. Objector Savitri Devi has been examined as D.W.5 and she has deposed that she is the only daughter of Ram Bhagwan Mishra and Ramdasi Devi. His father died in 21.06.1966 and he did not solemnized any second marriage. Yogendra Mishra is his cousin brother and she used to live with him and got 1/3rd share from joint family property. Bhagwan Mishra had solemnized two marriage and his first wife was Tara Devi from which one son Rejendra Mishra was born and from second wife Yogendra Mishra was born. Partition took place between his uncle Bhagwan Mishra and sons of Pitambar Mishra in 1990 in which the share of his father remained joint with Yogendra Mishra and he used to give her the share but after denial she filed a partition case being Case No. 77/03 which is pending in the court of Sub-Judge -III, Danapur. She has further deposed that there was partition among the three branches and in which sons of Pitambar Mishra and second wife Ram Pari Kuer of Ram Bhagwan Mishra were present. She has further deposed that she has not seen Shiv Kumari Devi, who has a son Yogendra Mishra. She was married at the age of 15-16 years and since when she is residing in her matrimonial house.

20. Rampujan Mishra has been examined as witness on behalf of defendant no.1 Savitri Devi (objector). He



has deposed that he is husband of Savitri Devi and knows plaintiff Yogendra Nath Mishra very well. The name of his father is Bhagwan Mishra and mother is Rampari Devi. Bhagwan Mishra had two wives, first wife was Tara Devi from whom one son, Rajendra Mishra was born and after death of Tara Devi Rampari Devi was his second wife from whom one son Yogendra Nath Mishra (applicant) was born. Raghubansh Mishra is recorded tenant who had three sons Pitamber Mishra, Bhagwan Mishra and Rambhagwan Mishra. Pitamber Mishra and Bhagwan Mishra are own brothers and 'Sarhu' also. Pitamber Mishra's wife Binda Devi and Bhagwan Mishra's first wife Tara Devi are sisters. Rambhagwan Mishra was married to Ramdasi Devi from whom a daughter Savitri Devi was born and she is his wife. Rambhagwan Mishra was a learned person and taught in a private school and also work as a priest. Rampari Devi was not wife of Rambhagwan Mishra. Properties of plaintiff and defendant are joint. Earlier plaintiff used to give share of Savitri Devi, but recently he has stopped as such defendant has filed a suit for partition against plaintiff Yognendra Nath Mishra which is pending before the court of Sub-Judge-III, Danapur. Plaintiff is a fraudulent person and on 07.11.2002 he got executed a sale deed of Plot No. 4692 measuring 03



decimals in his favour and remaining properties were executed as Will. At the time of registry his Mausera brother Surendra Mishra and Mamera brother Satendra Mishra conspired as witness and identifier. Bhagwan Mishra was known as Sri Bhagwan Mishra. Rambhagwan Mishra, who is father of Savitri Devi died in village Painal at his home on 21.06.1966. Pitambar Mishra father of Surendra Mishra performed the last rites in which he participated. He has produced the genealogical table given by Mikhiya of village Painal. Residential certificate of Savitri Devi, death certificate issued by Block dated 21.06.1966, Voter list of Painal of 1994 in which Rampari Devi has been shown as wife of Bhagwan Mishra.

21. He has deposed that he was married to Savitri Devi in the year, 1950 at the age of 15 years. Pitambar Mishra, Sri Bhagwan Mishra and Rambhagwan Mishra were own brothers and were son of Raghubansh Mishra. All of three brothers separated in 1990. All of three brothers were alive but subsequently said that Bhagwan Mishra was alive who died in 1992 and remaining two brothers were dead. At the time of partition sons of Pitamber Mishra were alive and in the branch of Rambhagwan Mishra his daughter Savitri Devi was not included. He has not seen the partition deed. Three branches



have been separately recorded in revenue records and separate rent receipts are granted. The rent receipts of Late Pitambar Mishra is granted in the name of Rajdev Mishra, Nagendra Mishra and Surendra Mishra. Rent receipts of Sri Bhagwan Mishra is granted in the name of Bhagwan Mishra. The rent receipts of Late Rambhagwan Mishra is granted in the name of Rampari Devi mother of Yogendra Mishra. He is not aware that under which capacity the rent receipts of branch of Rambhagwan Mishra is granted in the name of Rampari Devi. It is not true that Rampari Kunwar was wife of Late Rambhagwan Mishra, who participated in the partition of 1990 as his representative. It is not true that the land of Rambhagwan Mishra was allotted in the share of his wife Rampari Kunwar. It is not true that in the Revenue Records all the lands of Rambhagwan Mishra were recorded in the name of his wife Rampari Devi and rent receipts are also being granted subsequently said that all are forged document. First wife of Rambhagwan Mishra was Ramdasi Devi. It is not true that after death of his first wife Ramdasi Devi second marriage of Rambhagwan Mishra was solemnized with Rampari Devi. Name of first wife of Sri Bhagwan Mishra was Tara Devi and name of second wife was Rampari Devi. Rampari Devi and



Shiv Kumari Devi were own sisters. In order to established that second wife of Sri Bhagwan Mishra was Rampari Devi, he has produced the electoral roll of 1994. Bhagwan Mishra was known as Sri Bhagwan Mishra. He has not seen the certified copy of voter list of 1966, 1971, 1975 and 2005 filed by plaintiff. He has seen the Will executed by Rampari Devi and further says said that both will and sale deed were executed on the same day.

22. Apart from Savitri Devi (objector) and her husband Ram Pujan Mishra, Ashok Kumar Mishra, brother-in-law of objector was examined as D.W. 2, Ram Bhagwan Singh has been examined D.W. 3 Ramswarup Mihra has been examined as D.W. 4 who have supported the case of defendant that testatrix Ram Pari Devi was not widow of Late Ram Bhagwan Mishra rather she was widow of Bhagwan Mishra and mother of Yogendra Mishra and got the Will executed and registered misrepresenting her as widow of Late Ram Bhagwan Mishra.

23. In a probate proceeding the only question to be determined by the Probate Court is that whether the document put forward as the last will and testament of a deceased person was duly executed by and attested in accordance with law and whether at the time of such execution



the testatrix had sound disposing mind. The grant of letter of administration is decisive only of the will propounded and not the title of the testatrix to the property. The finding recorded by the Probate Court does not operate as *res judicata* in a suit filed by the objector seeking declaration of her right, title and interest in the property. The jurisdiction of Probate Court is confined only to the genuineness of Will. The status of the testatrix or her interest and title in the bequeath property is beyond the scope and ambit of Probate Court.

24. From the oral and documentary evidence laid by the parties before the Probate Court, it is established that Raghubansh Mishra had three sons namely, Pitamber Mishra, Bhagwan Mishra and Ram Bhagwan Mishra. Pitamber Mishra was married to Binda Devi and had three sons namely, Rajdeo Mishra, Nagendra Mishra and Surendra Mishra. Bhagwan Mishra's first wife was Tara Devi and from said wedlock one son Rajendra Mishra was born and from his second wife Shiv Kumari Devi, Yogendra Mishra (applicant) was born. Ram Bhagwan Mishra first wife was Ram Dasi Devi and from said wedlock Savitri Devi (objector) was born and his second wife was Ram Pari Devi who was issueless and executed the Will in favour of applicant Yogendra Mishra. Said relations are



established by documentary evidence that is voter list (Exhibit 6 series) of the year 1966 in which name of husband of Ram Pari Kuer (testatrix) is mentioned as Ram Bhagwan Mishra. Sabitri Devi (objector) in her deposition in paragraph nos. 16 and 22 has admitted that Rampari Kuer (testatrix) was the second wife of Ram Bhagwan Mishra and applicant Yogendra Mishra is son of Shiv Kumari Devi. Rampujan Mishra who is husband of Sabitri Devi (objector) has admitted in his deposition that there was partition among the three branches in 1990 i.e. sons of Pitambar Mishra, Bhagwan Mishra and Ram Pari Devi and thereafter lands were separately mutated and the lands which came in the share of Late Bhagwan Mishra was mutated in the name of Ram Pari Devi and rent receipts were issued in her favour.

25. After going through the materials and evidence on record, the applicant/appellants have been able to establish that the will was executed by late Ram Pari Kuer in sound disposing state of mind and due execution of will has been proved by the applicant/appellant in terms of Section 68 of Evidence Act and Section 63 of Succession Act, 1925 and both the attesting witnesses have been examined by the applicant/appellant on basis of which due execution of will by



the testatrix is proved. The objector Savitri Devi has not denied that Will was not executed by the Ram Pari Devi rather her stand was that Ram Pari Devi was not widow of Ram Bhagwan Mishra rather she was widow of Bhagwan Mishra and mother of Yogendra Mishra. Applicant Yogendra Mishra got the Will executed by Ram Pari Devi misrepresenting her to be widow of Ram Bhagwan Mishra.

26. The other issue whether the execution of Will was shrouded by any suspicious circumstances, the Trial Court has found that Savitri Devi (objector) was the daughter of Late Rambhagwan Mishra as such, it does not appear to be natural that property of Late Rambhagwan Mishra will be bequeathed to nephew Yogendra Mishra without giving any share to his daughter Savitri Devi (objector). However, the Probate Court failed to take into consideration that objector Savitri Devi was already married and she was residing in her matrimonial home and it was applicant Yogendra Mishra, who took care and rendered his services to her and she nursed great love and affection for him and all family members deposed that testatrix treated applicant like her son and executed the Will in his favour out of her own free will and volition and without any coercion or undue influence and Rampari Devi was step mother



of Savitri Devi as such bequeathing the property to Yegendra Mishra applicant who was her nephew and was treated like a son is not unnatural, unfair and illogical.

27. The Apex Court in case of Jagdish Chand Sharma Vs. Narain Singh Saini since reported in 2015 (8) SCC 615 in para 57 has held as following:

“57. A will as an instrument of testamentary disposition of property being a legally acknowledged mode of bequeathing a testator’s acquisitions during his lifetime, to be acted upon only on his/her demise, it is no longer res integra, that it carries with it an overwhelming element of sanctity. As understandably, the testator/testatrix, as the case may be, at the time of testing the document for its validity, would not be available, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation. This is more so, as many a times, the manner of dispensation is in stark departure from the prescribed cannons of devolution of property to the heirs and legal representatives of the



deceased. The rigour of Section 63(c) of the Act and Section 68 of the 1872 Act is thus befitting the underlying exigency to secure against any self-serving intervention contrary to the last wishes of the executor.”

28. The Apex Court in case of Rabindra Nath Mukherjee and another Versus Panchanan Benerjee and another since reported in 1995 (4) Supreme Court Cases 459 in para 4 and 6 while dealing with the deprivation of the natural heirs by the testatrix and effect of registration of will has held as following:

“4. As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred and in others only partially. As in the present case, the two executors are sons of a half-blood brother of Saroj Bala, whereas the objectors descendants of a full blood sister, the disinheritance of latter



could not have been taken as a suspicious circumstance, when some of her descendants are even beneficiaries under the Will.”

6. Insofar as the third circumstance is concerned, we may first observe that witnesses in such documents verify whether the same had been executed voluntarily by the person concerned knowing its contents. In case where a will is registered and the Sub-Registrar certifies that the same had been read over to the executor who, on doing so, admitted the contents, the fact that the witnesses to the document are interested loses significance. The documents at hand were registered and it is on record that the Sub-Registrar had explained the contents to the old lady. So, we do not find the third circumstance as suspicious on the facts of the present case.”

29. The evidence of defendants are inadequate to dispel the validity of Will or any suspicious circumstance shrouding the execution of will.

30. For the reasons as stated above, this appeal is allowed and the judgment dated 11.06.2010 and decree dated



21.06.2010 passed by the learned Additional District and Sessions Judge, XIII, Patna in Title Suit No.18/2005 / 2/2009 (arising out of Letters of Administration case No.10/2005) is set aside. Appellant is entitled for grant of Letters of Administration of registered Will dated 07.11.2002 executed by Ram Pari Kuer wife of Ram Bhagwan Mishra.

31. Let the LCR be returned to the court concerned forthwith.

(S. Kumar, J)

Sanjay/- Rajiv

AFR/NAFR	NAFR
CAV DATE	28.06.2019
Uploading Date	03.01.2020
Transmission Date	NA

