

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.742 of 2012

1. Smt. Urmila Devi, wife of Gautam Pandey, resident of village & P.O. Tarwar, P.S. Marhourah, District- Saran
2. Smt. Manju Devi, wife of Dr. Vijay Kumar, resident of village & P.O. Pirauta, P.S. Baniyapur, District- Saran
3. Smt. Subhanti Devi, wife of Dr. Rejeshwar Pd. Sinha, resident of village Janhagirpur, P.O. Suhai Sahpur, P.S. Baniyapur, District- Saran.
4. Smt. Kiran Devi, wife of Sushil Kumar Rai, resident of village Dhodupur, P.O. Panditpur, P.S. Bhagwanpur Hat, District- Saran.
5. Smt. Ahilya Devi, wife of Raghawendra Kishore Prasad Singh, resident of village Gangapur, P.O. Gangapur, P.S. Musari Gharari, District- Samastipur.

... .. Appellant/s

Versus

1. Mostt. Sudha Kuer, wife of Late Balmiki Ojha.
2. Kabindra Ojha, son of Late Janardan Ojha
3. Mostt. Brij Kishori Kuer, wife of Late Janardan Ojha.
4. Ramesh Chandra Ojha @ Subash Ojha @ Tuntun Ojha, son of Sheo Nandan Ojha
Respondent no.1 to 4 are residents of village- Dhangarha, P.O. Dhangarha, P.S. Baniyapur, District- Saran.
5. Saket Kumar Singh
6. Animesh Kumar @ Pintu
7. Chintu Singh
Respondent nos. 5 to 7 are sons of Late Shankar Singh, resident of village & P.O. Maghar, P.S. Bhagwanpur, District- Siwan.

... .. Respondent/s



Appearance :

For the Appellant/s : Mr.Harsh Anuj
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 21-08-2019

Heard the parties.

2. This miscellaneous appeal has been filed against the judgment and order dated 09.08.2012 passed in Probate Case No. 24 of 2002 by the learned Adhoc Additional District and Sessions Judge-1st, Saran at Chapra by which he has dismissed the Probate Case of appellants.

3. Appellants are daughter of late Madhuban Ojha who executed a registered deed of will dated 22.11.1995 in favour of appellants. It has been submitted that although Madhuban Ojha was literate but due to some difficulty in the eye-sight he put his L.T.I. over the Will and the Will was scribed by Ajit Kumar Shrivastava and Sushil Kumar and Sawaliya Rai were the two attesting witnesses of the Will.

4. The testator Madhuban Ojha died on 22.12.1995 and thereafter application was made by applicants for grant of probate of the registered Will which was numbered as Probate Case No. 24 of 2002 in which near relatives were made party who have filed their objection against application of petitioner/ appellants for grant of Will. It has been submitted that on the



direction and instruction of testator the Will was scribed by Ajit Kumar Shrivastava on 22.11.1995. The deed writer read over and explained the contents of Will to Madhuban Ojha who after understanding the same put his L.T.I. on the Will in the presence of attesting witnesses. Sawaliya Rai signed for Madhuban Ojha and the deed was attested by Sushil Kumar and Sawaliya Rai in presence of testator and they put their signature on the Will as attesting witnesses. At the time of execution of Will testator Madhuban Ojha was in a fit state of mind and body and the Will was presented for registration before the Registering Authority and same was registered.

5. The opposite parties appeared and filed their objection against grant of Will in which they denied the signature or thumb impression of Madhuban Ojha over the Will. The so-called attesting witness were stranger to Madhuban Ojha and he had no concern with the scribe and the attesting witness and the alleged Will presented for probate is a forged Will.

6. Daughters of Madhuban Ojha are married who are well settled. Madhuban Ojha was an orthodox and did not want that family properties should go outside the family and he executed a Will on 13.01.1994 in favour of objectors Smt. Shiv



Kumari Devi and Balmiki Ojha.

7. The petitioner/applicants in order to defeat the claim and objection has brought in existence a forged and fabricated Will and prayed that the case for grant of probate may be dismissed.

8. In support of grant of probate of Will no witnesses were examined on behalf of appellants. The examination of one of the attesting witness is mandatory for grant of probate, in absence of which probate cannot be granted.

9. In order to get grant of probate of will due execution of will by testator in a fit and free disposing state of mind, dispelling any suspicious circumstances, is to be established by the propounder of will.

10. It has been submitted on behalf of appellants that the original registered Will was in possession of applicant/appellant and same was submitted to the District Judge, Saran, Chapra for its safe custody on 26.01.2002. However, mere registration of a Will does not establish its genuinty and authenticity and it has to be proved in accordance with Indian Succession Act and Evidence Act before the Probate court and it can be genuine and valid if its due execution has been established by examination at least one of attesting



witnesses before the Probate Court which is completely lacking in the present case.

11. After hearing the counsel for the appellants, this court does not find any merit in this appeal and accordingly same is dismissed.

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

(S. Kumar, J)

Rajiv/-

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

