

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.696 of 2016

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Smt. Sunaina Devi, Wife of Sri Birendra Prasad @ Birmani Prasad, resident of village-Pati Bigha, P.S.-Islampur, District-Nalanda.

... .. Appellant/s

Versus

1. Estate of Ram Lakhan Singh, son of Late Jaddu Dash, Resident of village-Pati Bigha, PO-Chandharia, P.S.-Islampur, District-Nalanda.
2. Muneshwar Singh, Son of Late Jaddu Das.
3. Musafir Singh, S/o Late Jaddu Das, both 2 and 3 resident of village-Pati Bigha, P.S.-Islampur, District-Nalanda.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Bajarangi Lal, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 06-12-2022

Heard Mr. Bajarangi Lal, learned counsel for the appellant.

2. The present appeal is directed against the order dated 26.04.2016 passed in Probate Case No.02 of 2003 / T.S. No.03 of 2008 by the learned 6th Additional District & Sessions Judge, Nalanda at Biharsharif, by which the learned court rejected the case of the appellant and refused to grant probate in her favour.

3. The matrix of facts giving rise to the present appeal is/are as follows:

4. Ram Lakhan Singh, the cousin father-in-law of the appellant was issueless. The appellant used to take care of him and accordingly pleased with her service, he executed a Will on



19.08.2002 in her favour and left thumb impression was given on the paper in the presence of Kapildeo Prasad, Sidheshwar Prasad and Bimal Singh.

5. Ram Lakhan Singh died on 27.11.2002 whereafter the probate case was preferred before the court concerned.

6. The opposite party namely, Muneshwar Singh and Musafir Singh filed objection in the matter stating therein that it is a forged Will and despite they being the own brothers of Ram Lakhan Singh, deliberately they were not made parties to contest the case.

7. It was the further contention of the opposite parties that the lady never served Ram Lakhan Singh nor any Will was executed in her favour. It was further case that Ram Lakhan Singh was ill suffering from Paralysis and was virtually senseless when the alleged Will is claimed to have been executed on 19-08-2002 and as such the present petition is fit to be dismissed.

8. The learned court framed following issues:

- (i) whether the case is maintainable?
- (ii) is the Will dated 19.08.2002 a valid document?
- (iii) is it a forged and fabricated document?



(iv) was Ram Lakhan Singh suffering from paralysis and not in a fit health on 19.08.2002?

(v) was he in a sound state of mind when the Will was prepared?

(vi) whether the applicant is entitled for grant of probate?

9. In support of her case, four witnesses were put forward.

10. AW.1 is Sunaina Devi herself and she supported the Will dated 19.08.2002. According to her, Ram Lakhan Singh executed the Will and put his LTI on the document. They went to the office on 'Tumtum' to Islampur Registry Office. The document on which Ram Lakhan Singh put his LTI was a stamp paper. She further accepted that she has a sister-in-law Punam Devi and Bimal Singh is her father-in-law.

11. AW.2 is Bimal Singh who is related to the lady and he has supported the aforesaid Will. It was his further case that the lady used to serve Ram Lakhan Singh and pleased with her service, the Will was executed.

12. AW.3 is Birendra Prasad. He is the husband of the applicant Sunaina Devi. He also supported the Will dated



19.08.2002 and further deposed that on 27.11.2002, when Ram Lakhan Singh died, all the expenses to the tune of Rs.10,000/- was borne by him.

13. AW.4 is Kapildeo Prasad who has also supported the signing of the document. He named his father as Sidheshwar Sao but the document showed his name as Kapildeo Prasad, s/o of Sidheshwar Prasad.

(i) the exhibits that were produced by the applicant was Ext.I, the Will dated 19.08.2002.

(ii) Ext.II is the 'Malgujari' receipt and Ext.III is the death certificate.

14. The opposite party who deposed on the other hand were Amlesh Prasad and Musafir Singh.

15. According to them, Ram Lakhan Singh was seriously ill, was senseless at the alleged timing of the execution that has been stated by the applicant, was not even able to do his daily cores and as such under no circumstance, the Will could have been executed.

16. It was their further statement that after his death, all the funeral expenses were borne by them and not by the husband of the applicant.



17. Opposite party witness, Amlesh Prasad further narrated that the funeral of Ram Lakhan Singh was done at Islampur and reiterated that the funeral was done by Musafir Singh.

18. The learned court thereafter held that against the claim of the lady that the Will was executed on stamp paper, the said document do not have any stamp/ticket.

19. Further, on 19-04-2000, the brothers were separated and according to the applicant, she possess the papers of separation but the same was/were never provided/produced to the court. Further, the lady put forward 'Malgujari' receipt in the name of Ram Lakhan Singh to show that he was in state of separation which falsifies her own statement inasmuch as the 'Malgujari' receipt in the name of Ram Lakhan Singh is of 31.01.2000 whereas according to her, the brothers separated on 19.04.2000.

20. The learned court further took into account that the 'Kateeb' Birendra Prasad who allegedly penned the Will was not presented/examined.

21. Further, none of the witnesses belong to Patibigha from where Ram Lakhan Singh belonged to.

22. Accordingly, the learned court vide an order dated



26.04.2016 came to a definite finding that the Will on the basis of which the applicant is seeking relief is not a valid piece of document and accordingly the claim was rejected.

23. Aggrieved by the said order, the present appeal has been filed.

24. Mr. Bajarangi Lal, learned counsel for the appellant submits that the opposite party did not challenge the LTI of Ram Lakhan Singh. It is his further submission that only because the Will was not registered, that cannot be basis for ignoring the claim. The last submission of Mr. Bajarangi Lal is that Mr. Ram Lakhan Singh was in a fit state of mind and even if he was suffering from Paralytic stroke, the same cannot prevent him from putting an LTI on the document.

25. However, Mr. Bajarangi Lal failed to provide answer to the facts that when the lady herself submitted that the document was signed on stamp paper, why there was no stamp available on the Will. Further, when the state of separation took place on 19.04.2000, how the Malgajari receipt dated 31.01.2000 was provided.

26. In view of the aforesaid facts that there is/are no answer to the said findings of the concerned court, it rightly came to the conclusion that the Will dated 19.08.2002 is not a



valid piece of document for which relief, as prayed for by the applicant, can be granted.

27. This Court is in full agreement with the order dated 26.04.2016 passed in Probate Case No.02 of 2003 / T.S. No.03 of 2008 by the learned 6th Additional District & Sessions Judge, Nalanda at Biharsharif.

28. The M.A. No.696 of 2016 fails and is accordingly dismissed.

(Rajiv Roy, J)

Prakash Narayan

AFR/NAFR	NAFR
CAV DATE	NA
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