

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1036 of 2016

1. Pawan Sao
2. Manoj Sao Both are sons of Gulab Sao and are resident of Mohall Maharajganj of Rafiganj, P.S.-Rafiganj, District- Aurangabad Bihar.

... .. Appellant/s

Versus

Parwati Devi wife of Gulab Sao, resident of Mohalla- Maharajganj of Rafiganj, P.O.P.S.-Rafiganj, District-Aurangabad, Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Mrigendra Kumar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT

Date : 16-12-2022

The present appeal is directed against the order dated 15.7.2016 passed by the learned Additional District Judge-III, Aurangabad, in L.A. No. Case No. 69/13/2/15 by which the prayer for grant of Letter of Administration with respect of assets of Testator/opposite party was negated.

2. The facts of the case is/are as follows:-

3. One Rupiya Devi had executed a registered deed of Will with respect to a land bearing plot no. 604 (area 41/2 of decimal), khata No. 190 in favour of Pawan Sao in the district of Aurangabad. Subsequently, on 18.12.2003 Rupiya Devi died.

4. Thereafter, the Letter of Administration Case No. 69/13/2/15 was preferred by Pawan Sao. It was claimed that the Will was prepared in his favour at the instance of the Testator,



Rupiya Devi in the presence of Ramadhar Sharma and she put in her L.T.I. on the document so made.

5. On behalf of the appellants, the following witnesses were examined as follows:-

A.W.-1, Manoj Sao;

A.W.-2, Pawan Sao;

A.W.-3, Ramadhar Sharma;

A.W.-4, Narain Prajapati who identified his signature on the Exhibit-1/A;

A.W.-5, Umesh Sharma who inscribed the Will;

A.W.-6 Parwati Devi is the daughter of Manoj Sao.

6. The exhibits that were put on record were as follows:

Exhibit-1/A the Will;

Exhibit-1/B the signature of the A.W.5 on the Will'

Exhibit-2 the death certificate.

7. As there was no opposition to the matter, the witnesses were not cross-examined and were discharged.



8. Thereafter, the learned Court vide an order dated 15.7.2016 came to the following findings:

Rupiya Devi-"Nani" of Manoj Sah executed registered Will in his favour having been pleased with his services as he claimed. However, there are many suspicious circumstance surrounding the present case. The foremost amongst them was the missing ingredients of Section -2 (k) of the Indian Succession Act.

9. The learned Court however recorded that the said ingredient is completely missing in the particular case. It was further observed that the Will must narrate that the Testator is the only person entitled to execute the Will regarding property but the same has not been mentioned in Schedule-1 and it can be presumed that it was done with ulterior motive to make wrongful loss to the other persons.

10. Further, the date of execution of the Will is 27.6.2003 and the death of Testator is 18.12.2002 showing that she died within six months of the said execution. She was 80 years of age and no cogent evidence has been brought on record by the applicant/petitioner that at the time of execution of Will she was mentally fit to understand everything regarding the said execution.



11. There was another statutory duty upon the petitioner to disclose the name of all the relatives or relation with the persons who had executed the Will as mandated in Section 372(c) of the **Indian Succession Act** and again it is important to bring on record Section 372 of the Indian Succession Act:-

372. Application for certificate.-(1)
Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908), for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:-

(a) the time of the death of the deceased;

(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within



the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;

(c) the family or other near relatives of the deceased and their respective residences;

(d) the right in which the petitioner claims;

(e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and

(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that



person shall be deemed to have committed an offence under section 198 of the Indian Penal Code (45 of 1860).

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.

12. In this particular case, Parwati Devi, the daughter of the Testator was not made party in the case but instead was brought as a witness (A.W.-6) to support his case. Thus, the base ingredient was missing casting suspicion again.

13. Thus, taking into all the aforesaid facts, the learned Court rejected the claim of the petitioner-appellant for grant of Letter of Administration in his favour.

14. Aggrieved, the present appeal was filed.

15. Heard learned counsel for the appellants.

16. Learned counsel for the appellants submits that the Testator was his 'Nani' and being pleased with his services as he used to take care of her, she executed the aforesaid Will. However, on the questions raised by the concerned Court, no plausible explanation was forthcoming.



17. This Court has gone through the facts of the case, the submission put forward by the learned counsel for the appellant as also the order dated 15.7.2016 passed by the learned by the learned A.D.J.-III, Aurangabad.

18. A bare perusal of Section 372 of 'the Act' would show that the appellant was duty bound to make each and every family member of the Testator as party in the said plaint which he failed to do inasmuch as Parwati Devi, the daughter of the Testator was not made party to it. Further, there was nothing on record to show that the lady, who was 80 years of age, was in a sound state of mind and physically fit to understand the contents of the Will before she executed the same.

19. Thirdly, another ingredient that was missing and taken note of by the learned Court was the omission of fact that the property in question exclusively belonged to the Testator and not to anyone else and thus the motive was to deprive other persons to the benefit of the appellant herein.

20. Having found force in the said observation/finding of the learned 3rd Additional District Judge, Aurangabad, this Court does not find any merit in the present appeal. The concerned Court was perfectly justified in rejecting the claim of the appellant herein.



19. The M.A. No. 1036 of 2016 fails and is accordingly dismissed.

(Rajiv Roy, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	08.12.2022
Uploading Date	16.12.2022
Transmission Date	NA

