

Item-43. 06-09-2022

sg

Ct. 8

FA 116 of 2007

Swapan Patra & Ors.
Versus
Prativa Patra & Anr.

In spite of service of Administrative Notice upon the parties, the parties are not represented.

In order earlier order dated 13th July, 2022 while directing the service of Administrative Notice upon the parties along with a copy of our order, it is clearly indicated that the appeal and the connected application shall be heard on the adjourned date i.e. on 3rd August, 2022 and in the event, the parties are not represented, the matter may be disposed of on the basis of the materials available on record. We propose to dispose of the matter on the basis of the LCR produced before us by the department.

The appeal is directed against a judgment and decree dated 26th October, 2006 in connection with an application for granting probate.

The learned Trial Court granted the probate of the last Will and testament of Prahlad Chandra Patra in respect of the Will dated 2nd April, 1997 in favour of the plaintiff. The plaintiff is a named executrix in the Will. The appellant has challenged the said grant on the ground that at the time of execution of the Will, the testator was not mentally and physically fit. The said order was passed on misappreciation of the evidences of DW-1 to DW-4 as the testator was suffering from cancer and was not physically and mentally fit to execute the perpetrated Will dated 2nd April, 1997.

It has also been urged that the Will is a forged document and the execution of the said Will is surrounded by suspicious circumstances.

The proceeding was contested by the present appellants. The appellants are the wife and children of the deceased. The other executrix is a second wife of the testator. According to the executrix, the testator executed a Will in her father on 2nd April, 1997 two rooms mentioned in the schedule of the Will where the testator gave her right of residence. It appears from the LCR that in order to prove the mental and physical capacity to execute the Will, three witnesses, namely, PW-1, PW-2 and PW-3 were examined along with the plaintiff. PW-2 is the brother of the testator and PW- is the son of the testator. PWs 1, 2 and 3 are the attesting witnesses of the Will and from their evidences it is quite clear that the testator executed the Will in favour of the plaintiff and he had the mental and physical capacity to execute the same.

The question of the legality of the second marriage is not relevant as it is established that the plaintiff treated the executrix as a second wife and the relationship was admitted by none other than the brother of the testator, who had no interest in the property at all. She was granted only life estate in respect of two rooms.

The Will does not appears to be unnatural. The execution of the Will has been duly proved by the attesting witnesses. There was no suspicious circumstances surrounding the execution of the Will. The Will was proved in accordance with Section 63(c) of the Indian Succession Act.

In view thereof, the appeal fails. However, there shall be no order as to costs.

The department is directed to return the LCR forthwith to the learned Trial Judge.

(Uday Kumar, J.)

(Soumen Sen, J.)