

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.984 of 2018

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Smt. Punam Devi wife of Shambhu Pathak, R/o Village-Nawkothi, PS-Nawkothi, Pargana-Balia, Sub Division-Bakhri, District-Begusarai.

... .. Appellant/s

Versus

Unknown

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Pramod Kumar Sinha
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

3 14-02-2023 The appellant has preferred this appeal being aggrieved by the order dated 06.09.2018 passed by Sri Ranjan Kumar, the learned Subordinate Judge, 1st Court, Begusarai (District Judge Delegate) in Probate Case No. 27 of 2012.

Brief fact of this case is that Saroswati Devi, the testatrix, had executed a deed of Will in favour of the appellant, Smt. Punam Devi on 13.12.2021. It was a registered deed, containing the signature of two attesting witnesses, namely, Madan Mohan Singh and Santosh Kumar Verma.

The learned counsel for the appellant has submitted that it was a registered deed of Will and none has come forward to contest the genuineness of the same. But the learned court below has rejected the probate application on the sole ground that only one attesting witness, Madan Mohan Singh along with



scribe was examined. The learned counsel for the appellant has submitted further that the ground on which the probate petition was rejected, was not supported by law, and is illegal.

Section 63 of the Indian Succession Act, 1925 makes it mandatory that a deed of Will must be executed in presence of at least two attesting witnesses, but it does not require, both the witnesses must come in the witness box in support of execution of that deed. The learned counsel has relied upon a decision of the Hon'ble Supreme Court, reported in *AIR 2008 Supreme Court 300, Savithri & Ors. v. Karthyayani Amma & Ors.*, which says that to establish the probate case, only examination of at least one attesting witness is adequate. Paragraph 14 of the decision is being extracted herein below:-

“14 - The legal requirements in terms of the said provisions are now well- settled. A Will like any other document is to be proved in terms of the provisions of the Indian Succession Act and the Indian Evidence Act. The onus of proving the Will is on the propounder. The testamentary capacity of the propounder 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 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 exist suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine.”

Considering the above-mentioned facts and circumstances, this appeal is allowed, and the impugned order is set aside and the Will is probated.

(Nawneet Kumar Pandey, J)

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