

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**FIRST APPEAL No.52 of 1986**

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- 1.1. Most. Rajmani Devi Widow of Late Bhagwati Saran, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
- 1.2. Om Prakash Lal, son of Late Bhagwati Saran, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
- 1.3. Anandi Prasad, son of Late Bhagwati Saran, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
- 1.4. Arem Lal, son of Late Bhagwati Saran, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
- 1.5. Jai Prakash Lal, son of Late Bhagwati Saran, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
- 1.6. Sakuntala Devi, D/o Late Bhagwati Saran, W/o Shree Chandrika Prasad, resident of Village-Aliganj, P.S.-Sikandara, Dist-Jamui.
- 1.7. Sheela Devi, D/o Late Bhagwati Saran, W/o Shree Dilip Kumar, R/o Vill Damaul, P.S. Chandradeep, Distt-Nawada.

... .. Appellant/s

Versus

- 1.1. Arem Kumar Son of Late Sita Ram, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
- 1.2. Ashish Kumar, son of Late Sita Ram, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
- 1.3. Kiran Devi, daughter of Late Sita Ram, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
- 1.4. Rita Devi, daughter of Late Sita Ram, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
- 1.5. Rekha Devi, daughter of Late Sita Ram, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
- 1.6. Suman Devi, daughter of Late Sita Ram, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
- 1.7. Shashi Devi, daughter of Late Sita Ram, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
2. Radhey Shyam son of Basanti Lall, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
3. Bhagwan Das, son of Basanti Lall, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
4. Binod Kumar, Son of Basanti Lall, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
5. Shanker Prasad, son of Basanti Lall, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.
6. Umesh Prasad, son of Basanti Lall, resident of Village-Babhandih (Wazirganj), Police Station-Wazirganj, District-Gaya.



... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Surya Bhushan Pd. Singh  
For the Respondent/s : Mr.S.S.Dwivedi, Sr. Advocate  
Mr. Parth Gaurav  
Mr.Kunal Aryan  
Mr. Sunil Kumar

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

**CAV JUDGMENT**

**Date :20 -06-2024**

I have already heard the learned counsel for the appellant as well as the learned counsel for the respondents.

2. Being aggrieved and dissatisfied with the judgment and decree dated 18.10.1985, passed by the 1st Additional District Judge, Gaya in Title Suit No. 12/6 of 1979/80/03 of 1984, whereby the suit for grant of letters of administration was dismissed, the original appellant (now deceased) had preferred this appeal.

3. The brief facts of the case is that the plaintiff/appellant filed an application for grant of letters of administration of the Will executed by the testator Late Chiraunji Lal on 21.12.1963 (Ext.1) in favour of the original appellant (hereinafter to be referred to as 'the plaintiff/appellant) under Section 278 of the Indian Succession Act, 1925. The plaintiff/appellant's case is that



Late Chiraunji Lal who was his uncle, executed the Will deed dated 21.12.1963 in his favour in respect of the disputed property, described as plot no.1459, area 03 dhurs and 04 dhurkis. A shop building was existing on that land. The averment of the plaintiff/appellant is that the disputed shop after partition, fell into the share of the testator. The testator died on 24.05.1965 in Pilgrim Hospital, Gaya, leaving behind his widow Sushila Devi and a daughter Kalawati Devi. Sushila Devi also died in the year 1971. Her daughter Kalawati Devi was residing in her matrimonial house after her marriage with Shri Raj Kishore Prasad, resident of Biharsharif, who was a well-off person. The testator was uncle of the appellant and the appellant used to look after the testator. The testator developed love and affection with him, and out of love and affection, he executed the Will deed dated 21.12.1963 in favour of the plaintiff/appellant in respect of the above mentioned property, which has been described in Schedule-A of the plaint in details. The deed of Will (Ext.1) was scribed by P.W.2, namely, Lala Suryabhan Prasad Sinha and was attested by three witnesses, namely, Nand Kishroe Singh (P.W.1), Ram Narayan Singh (P.W.3) and Late Mauji Lal,



who could not be examined. In the year 1971, the appellant filed mutation application in Anchal office, Wazirganj. His name was mutated in Anchal office, but the deed of Will, which was annexed with the mutation application, was misplaced. It could be traced in the year 1979 and thereafter the suit was filed on 17.11.1979. Firstly, it was registered as Letters of Administration Case No. 12 of 1979, but when the caveators appeared and contested it was converted into T.S.No. 06 of 1980.

4. The sole legal surviving heir of the testator who is his daughter, namely, Kalawati Devi, did not contest the suit. Her vendees were the defendants or the caveators and they contested the suit. The caveators/defendants challenged the deed of Will as forged and fabricated one. According to them, the plaintiff/appellant, taking the scribe and the attesting witnesses in collusion, prepared the forged Will deed. The defendants mentioned in their written statement that the disputed shop and land were given in the share of the testator, Chiraunji Lal in partition and it remained in possession of his family. The father of the legatee was the tenant of the testator and he was paying rent to the testator during his lifetime. After his death, he was



paying the rent to the widow and daughter of the testator. When the daughter of the testator Kalawati Devi, sold the land to the defendants/caveators, the plaintiff/appellant, in order to grab that property, fabricated and forged the Will deed. On the basis of that Will deed, he clandestinely mutated his name in the revenue records.

5. The scribe, P.W.2, the attesting witnesses P.W. 1 and 3 as well as the legatee, who has been examined as P.W.4, have stated in their depositions that the scribe and the attesting witnesses were called by the testator and on the request of the testator, the Will deed was written by P.W.2 and on the request of the testator, the attesting witnesses put their signatures over the Will deed. These witnesses also stated that the contents of the Will deed was read over to the testator and thereafter the testator put his signature over the Will deed. They also deposed that, at that time, the testator was in sound state of mind.

6. On the basis of pleadings, the following issues were settled:-

“(1) Whether the suit, as framed, is maintainable?

2. Whether the will and testament dated 21.12.1963 was executed by Late Chiraunji



Lal in sound state of mind and duly attested by the witnesses?

3. Whether the will and testament dated 21.12.1963 is a forged and fabricated document and brought into existence after the transfer of the suit property by the daughter of Chiraunji Lal on 31.8.1979, or after the death of the said Chiraunji Lal.

4. Whether the applicant-plaintiff is entitled to grant of letters of administration as prayed for by him?"

7. During the trial, the sound mental state of the testator was not challenged, as such, only thing remained to be adjudicated by the trial court was, and by this Court is, whether the deed of Will (Ext.1) was executed by the testator Chiraunji Lal or is it a forged and fabricated document?

8. As the issue nos. 3 and 4 are the main issues, these issues were dealt with elaborately by the learned trial Judge. During the trial, opinion of two handwriting experts were brought on record. The handwriting expert, examined on behalf of the plaintiff/appellant is P.W.9 Santosh Kumar Chatterji, who is retired examiner in the Directorate of Police Laboratory, Bihar. The report submitted by P.W.9 has been marked as Ext.4/a.

9. The defendants have also examined a



handwriting expert, namely, Krishna Kant Prasad (D.W.8).

His report has been exhibited as Ext.G.

10. The learned court below, after scrutinizing both the reports of the handwriting experts, found that the report of P.W.9 (Ext.4/a) is not trustworthy. The report of D.W. 8. Krishna Kant Prasad (Ext.G) was found creditworthy and believable. The grounds for disbelieving Ext.4/a and for giving reliance to Ext.G has elaborately been discussed in the impugned judgment. The disputed signature of the testator on the Will deed was tallied by both the experts with the admitted signature of the testator which was available on the partition deed dated 14.02.1962 (Ext.8).

11. P.W.9 stated during his deposition that on scrutiny and examination of the two sets of the writings, he opined that the slant of the writings in both the sets of writings ranges between 80° degree and 110° degree and the skill of the writings in both the sets is equally poor and the speed of writings in both the sets is fast. The pen pressure in both the writings were the same. On these basis, he opined that the disputed writings and the admitted writings are of the same person.

12. On the other hand D.W.8, who is also a



handwriting expert examined on behalf of the defendants/caveators, has given a detailed reasoning in his report (Ext.G), before coming to the conclusion that the disputed handwriting is not of the same person whose handwriting was present on the admitted handwriting. He, during his deposition, stated that he found the basic differences in two sets of the writings relating to the skill of writings, speed, line quality, movement of writings, size of letters, slants and writing characteristic of the letters. He opined that the admitted writings and the disputed writings are not of the same person, rather it is of two different persons. As such, there are two contradictory opinions of the handwriting experts. D.W.8 while detailing his reason, has stated in his deposition that in the admitted writings, there is a pattern of mode of making a hook like formation in the end of most of the strokes which is not in the case of the disputed writings. This fact was admitted even by P.W.9 and he also states that there were hooks like formation in most of the strokes in the admitted writings, but he stated that these variations are natural ones. D.W.8 not only found the absence of hooks in the strokes of the disputed handwritings but also he found that the figures in date in disputed writings



and in the admitted writings are dissimilar. The expert examined by the appellant/plaintiff admitted the dissimilarity in the formation of the letters in the admitted and disputed writings.

13. The expert examined on behalf of the caveators, P.W.8 gave reasons, as indicated above, for his opinion that the admitted signature and disputed signature are in the hand writings of two different persons. Even P.W.9 has admitted this dissimilarity in the admitted hand writing and the disputed writing. But he justified those dissimilarity by stating that these are natural phenomena.

14. As there are a number of variations in the admitted writing and disputed writing in respect of skill of writings, speed, line quality, movement of writings, slants, size of letters, writing characteristic of the letters and numerals, which establishes the fact that the handwriting including the signature claimed to be present on Ext.1, which is said to be written by the testator is not genuine. The plaintiff/appellant failed to prove that the hand writing of the admitted signature of the testator was the same as present on Ext.1, the Will deed. It is clear that Ext.1 is a forged and fabricated document and no letters of administration can be



granted in favour of the plaintiff/appellant.

15. The learned counsel for the plaintiff/appellant submits that no reliance can be made on the opinion of D.W.8, because his opinion was disbelieved in another case by another Court. As per submission, D.W.8 was examined as D.W.12 in another case (not related to the parties) and in that case the Court disbelieved the deposition of this witness. In this regard, in my considered opinion, if the opinion of an expert did not find favour of the Court in another case, it does not mean that his opinion shall be thrown outrightly on this ground.

16. D.W.8 has given reasons for his opinion and P.W.9 himself admitted the dissimilarity in two sets of writings. The opinion of D.W.8 is worth to be considered in the present case.

17. At the time of arguments, the learned counsel for the respondents drew the attention of the Court towards contradiction in the statements of P.W.1, who was a teacher at that time. P.W.1 who is attesting witness of the Will deed stated that at the time of preparation of the Will deed, he was called from his house, but again he stated that the testator called him when this witness was returning from



his school. This witness also stated that at the time of preparation of the Will deed, the wife of the testator was present in the contiguous room of the house and the execution of the Will deed was well within the knowledge of the wife of the testator, but during his cross-examination, he stated that he did not know whether the wife of the testator pre-deceased the testator or not. These contradictions, in the deposition of this witness, make him untrustworthy.

18. The learned Senior counsel, appearing on behalf of the appellant(s), submitted that the defendants/respondents have no locus to challenge the genuineness of the Will deed. They have no caveatable right. Only the legal heirs of the testator have caveatable right. In support of his submission, he relied upon a decision of Calcutta High Court in *original side in Case No. GA 888 of 2017 PLA 123 of 2016*. He also relied upon a decision of Hon'ble Supreme Court in case of *Sunil Gupta Vs. Kiran Girhotra, reported in 2007 (8) SCC 506*, in which it has been held that the transferee pendente lite is not a necessary party in a probate proceeding.

19. On the other hand, the learned counsel for the respondents submitted that bare perusal of Clause (c) of



sub-section 1 of Section 283 of the Indian Succession Act, 1925 shows that all persons having any interest in the estate of the deceased have caveatable right. This provision is being extracted hereinbelow:

*“.....(c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.....”*

20. The learned counsel for the appellant(s) relied upon a decision of Hon’ble Supreme Court, reported in ***(2008) 4 SCC 300 (Krishna Kumar Birla Vs. Rajendra Singh Lodha and another)***. In para-86 of the judgment the Hon’ble Supreme Court held that any person whose right is defeated due to grant of probate, he has a caveatable right. In case of ***G.Gopal Vs. C.Vasker, reported in (2008) 10 SCC 489***, the Hon’ble Supreme Court held that even a slightest interest in the property would entitle a person to file a caveat.

21. These two decisions interpreting Clause (c) of sub-section 1 of Section 283 of the Indian Succession Act explicitly make clear that any person whose right is going to be prejudiced on grant of probate, has a caveatbale right.

22. It has also been submitted by the learned



counsel for the appellant(s) that on the basis of the Will deed the name of the plaintiff/appellant was mutated in the revenue records and he is in possession of the property in dispute. He has also submitted that it is an admitted fact that the plaintiff/appellant is in possession of the disputed land/property. He submitted further that, as per the averment of the respondents, the testator had let out the disputed property in favour of the father of the legatee, but this averment of the respondents did not find favour of the learned trial court. As a matter of fact, the disputed property was given to the plaintiff/appellant out of love and affection by the testator and he was in possession of the said property.

23. So far as the entry of the name of the plaintiff/appellant in the revenue records is concerned, it is settled law that the entries in the revenue records neither creates nor extinguishes the title of a person. It is not an evidence of title. It has only presumptive value, unless rebutted by the cogent evidence.

24. In the present case, the presumption has been rebutted by the respondents. Merely because the plaintiffs/appellants are in possession of the disputed property, it does not mean that the title of that property is



vested in them.

25. On the basis of the above mentioned observations, I find that the Will deed, said to be executed by the testator in favour of the plaintiff/appellant (Ext.1) is forged and fabricated and no letter of administration can be granted to the appellants on the basis of that forged and fabricated Will deed.

26. Accordingly, this appeal is dismissed with cost.

**(Nawneet Kumar Pandey, J)**

HR/-

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