

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.309 of 2012

=====

RAMAWTAR CHAUDHARY Son of Late Kishori Chaudhary resident of
Village - Jounia, P.S. - Barari, Distt.- Katihar.

... .. Appellant/s

Versus

1. Sushil Chandra Mishra Son of Late Pandit Mahendra Narayan Mishra,
resident of Mohalla - Mangal Bazar, katihar, P.S. and Dist.- Katihar
2. Munna Yadav @ Munna Sah, Son of Late Chandra Prasad Yadav, resident of
Mohalla - Amda Tola, P.S. and Distt.- Katihar.
3. Ramashish Yadav @ Ramashish Sah, Son of Munna Yadav, @ Munna Sah,
resident of Mohalla - Amala Tola, P.S. and Distt. - Katihar.
4. Kalawati Devi daughter of Mulhiya Devi and wife of not known. resident of
Mohalla Larkania Tola ,P.S. and Distt-Katihar.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr.Samir Kr. Ranjan
For the Respondent/s	:	Mr. Naresh Chandra Verma
		Mr. Kamla Kant Tiwary

=====

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

CAV JUDGMENT

Date : 08-10-2024

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

2. Being aggrieved by the judgment dated
06.03.2009 passed in Letters of Administration Case No. 01 of
2001/T.S.No. 02 of 2004 by 1st Additional District Judge,
Katihar, dismissing the suit, the plaintiff/appellant has preferred
this appeal.

Initially, against the judgment and order impugned,
F.A.No.73 of 2009 was filed, but after observation by a co-



ordinate Bench of this Court, it was converted into Misc.Appeal No. 309 of 2012.

3. The plaintiff/appellant Ramawtar Choudhary is father of late Champa Lal Choudhary. Champa Lal Choudhary died on 06.08.1999. The plaintiff/appellant filed Letters of Administration Case No.01 of 2001 on the basis of Will deed dated 16.06.1986 (Ext.1), said to have been executed by Lachhiya Devi in favour of Champa Lal Choudhary. The case was converted into Title Suit No. 02 of 2004 after impleading respondent no.1 as defendant on his application under Order I, Rule 10 of the Code of Civil Procedure (for short 'the Code').

4. The brief facts of the case is that Lachhiya Devi bequeathed her property described in Schedule-A in favour of late Champa Lal Choudhary through a will dated 16.06.1986 (Ext.1), which is an unregistered deed. The testatrix Lachhiya Devi died on 02.03.1987 in her residential quarters. The plaintiff/appellant has described the relatives of Lachhiya Devi as Most.Chulhai Devi and Kalawati Devi, but the plaintiff/appellant did not mention the relation of these two ladies with late Lachhiya Devi and only it has been mentioned in the plaint/application that they were relatives of late Lachhiya Devi. It has been mentioned in the application/plaint that



Lachhiya Devi executed a Will deed in favour of son of the plaintiff/appellant on 16.06.1986 and she bequeathed Schedule-A property in his favour through that Will deed. His son Champa Lal Choudhary died in the year 1999. Though the plaintiff/appellant had not mentioned the date of death of Champa Lal Choudhary in his application, for the reasons best known to him, but during his deposition in para-3, for the first time, he disclosed the date of death of Champa Lal Choudhary as 06.08.1999. He applied for grant of Letters of Administration being class II heir of the deceased, after discovery of the Will deed found from a box, after the death of Champa Lal Choudhary.

5. Respondent no.1, Sushil Chandra Mishra filed an application for his impleadment as intervenor under Order I, Rule 10 of 'the Code' before the trial court. That application was allowed by the court below vide its order dated 03.12.2004. Thereafter, the case was converted into T.S.No. 02 of 2004. The respondent Sushil Chandra Mishra had purchased the Schedule I property from Munna Sah @ Munna Yadv and his son Ramashish Yadav @ Ramashish Sah respondent no.2 and 3 respectively.

6. The case of the intervenor/respondent no.1



Sushil Chandra Mishra is that the plaintiff/appellant had already filed T.S.No. 22 of 2001 in respect of the same property in which Sushil Chandra Mishra had intervened and became the defendant. Despite this fact, the plaintiff/appellant did not implead Sushil Chandra Mishra in the present case with some ulterior motives. As per the averments of respondent no.1, the property originally belonged to Mahadeo Sah and Mahadeo Sah had two wives; his first wife was Nehra Devi while the second wife was Lachhiya Devi (the alleged testatrix). Mahadeo Sah had bequeathed his property to Munna Sah (respondent no.2), who is his adopted son, vide registered Will deed dated 06.01.1956 (Ext.D). Mahadeo Sah died in 1958. After his death, his two wives Nehra Devi and Lachhiya Devi adopted the son of Munna Sah, namely Ramashish Yadav @ Ramashish Sah (respondent no.3 herein) through a registered adoption deed dated 16.06.1980 (Ext.E). It has been mentioned that the Will deed sought for Letters of Administration is forged and fabricated and no Letters of Administration can be granted on this Will deed.

7. It has been mentioned in the written statement that the plaintiff/appellant has concealed the fact that there is a house on the Schedule A property with intention to evade the



court fee.

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

- (1) Is the suit maintainable?
- (2) Has the plaintiff causes of action to file this suit?
- (3) Whether the Will is the last Will?
- (4) Whether the Will has been prepared at the instance and free-will of the deceased Lachchiya Devi?
- (5) Whether the plaintiff entitled to the letter of administration or probate?
- (6) Whether the plaintiff is entitled to the relief claimed?

9. On behalf of the plaintiff/appellant, five witnesses have been examined. P.W.1 is Raj Kishore Singh, the scribe of Ext.1. P.W.2 Shankar Choudhary and P.W.3 Mukesh Choudhary are the attesting witnesses. P.W. 4, Ram Swarup Sharma has supported the execution of the alleged Will deed in favour of Late Champa Lal Choudhary and P.W.5 is the plaintiff himself. Ext. 1 is the only documentary evidence adduced by the plaintiff/appellant.

10. Similarly, seven witnesses have been examined on behalf of the defendant Sushil Chandra Mishra. D.W.1 Prabhakar Paswan has a betel shop near the suit property. D.W.2



Arif Akhtar is the tenant of the suit property as a shopkeeper of tailoring house. D.W.3 is Md. Daud, whose house situates at the distance of 150-200 yards away from the suit property. D.W.4 Md. Hafiz is the occupant of one room of the suit property as tenant since 1982. D.W.5 is Sushil Chandra Mishra, the defendant/respondent no.1 himself. D.W.6 is M.H.Dedar who is a clerk in Registry Office. He produced the register of the Will deeds in the court and on the basis of his deposition, the Will deed executed by Mahadeo Sah in favour of Munna Sah dated 06.01.10956 was marked as Ext.D. D.W.7 is Kailash Pd. Sinha, a clerk working in the Municipal Corporation. He Proved Ext.C/1, municipal tax receipt in respect of the house situated on Schedule-A property. This receipt is income of Sushil Chandra Mishra. This witness has also proved Ext. F and F/1 which are the rent receipts of the tenanted portion of the suit property in favour of the tenant Md. Hafiz (D.W.4).

11. The following documentary evidences have been exhibited on behalf of the defendant:-

“ Ext.A is the sale deed no. 3295 dated 04.03.1989. Ext.A/1 is the sale deed no. 2357 dated 03.03.1989 and Ext.A/2 is the sale deed no. 3259 03.03.1989 executed by Munna Sah and his son Ramashish Sah in favour of Sushil Chandra Mishra.



Ext.B is the rent receipt. Ext.C/1 is the holding tax receipt, whereas Ext.D is the registered deed of Will, executed by Mahadeo Sah in favour of Munna Sah, his adopted son and Ext.E is the registered deed of adoption dated 16.06.1980 executed by Lachhiya Devi and Nehra Devi in favour of Ramashish Sah. Ext.F and F/1, as discussed above, are the house rent receipts.”

12. The names and descriptions of five witnesses examined on behalf of the plaintiff/appellant have been enumerated above.

13. P.W.1 Raj Kishore Singh is the scribe of the Will deed (Ext.1). As per his deposition, he was known to Lachhiya Devi. She was living in her house situated at Mangal Bazar, Katihar. He deposed that Lachhiya Devi was living in her house since 1946, but this witness himself was born after 1949 as he was 56 years old on the date of his deposition on 27.05.2005. As per his statement, the attesting witnesses put their signatures on the deed and this witness has also put his signature on the deed which has been marked as Ext.2

14. P.W. 2 Shankar Choudahry is also one of the attesting witnesses. This witness has proved the Will deed prepared in favour of Champa Lal Choudhary, executed by



Lachhiya Devi. He also proved his signature, which was marked as Ext.1/2. This witness in his cross-examination failed to say the khata and khesra of the land mentioned in the Will deed. He could not say whether the adoption deed in favour of Ramashish Sah was in his knowledge or not.

15. P.W.3 Mukesh Choudhary stated in his deposition that Lachhiya Devi requested him to be a witness and on her request, he became the witness of the Will deed. He stated that Mahadeo Sah had two wives, namely, Nehra Devi and Lachhiya Devi. He denied the fact of adoption of Ramashish Sah and also denied the Will by Mahadeo Sah in favour of Munna Sah.

16. P.W. 4 Ram Swarup Sharma has also supported the execution of the Will deed (Ext.1).

17. P.W.5 is Ramawtar Choudhary, the plaintiff/appellant himself. He deposed that Lachhiya Devi was his *Muh-Boli Bahan*. She was issueless and he used to come to her house and his son Champa Lal Choudhary also used to come to her house. Champa Lal Choudhary called Lachhiya Devi as 'Fua'. Lachhiya Devi executed the Will deed in favour of her son Champa Lal Choudhary. Lachhiya Devi died on 02.03.1987 and her son Champa Lal Choudhary died in the year 1999.



Mukesh Choudhary, P.W.3 informed this witness that the said Will deed was lying in a box in the maternal home of Champa Lal Choudhary. On information given by Mukesh Choudhary, this witness found the Will deed in a box, but it is surprising that P.W.3 Mukesh Choudhary did not even whisper about this fact during his deposition.

18. As discussed above, seven witnesses have been examined on behalf of the respondent/defendant Sushil Chandra Mishra.

19. D.W.1 is Prabhakar Paswan who is a proprietor of betel shop situated 50-60 yards away from the suit property. He stated that the property originally belonged to Mahadeo Sah, who adopted Munna Sah as his son. Mahadeo Sah had two wives Nehra Devi and Lachhiya Devi. These two ladies adopted Ramashish Sah as son after following the rituals of adoption. This witness did not know about Champa Lal Choudhary. He stated that Lachhiya Devi had sworn an affidavit in which she stated that no Will deed has ever been executed by her. This witness has stated that Munna Sah and Ramashish Sah sold the suit property to the defendant/respondent no.1 Sushil Chandra Mishra thorough Ext.A, Ext.A/1 and Ext. A/2.

20. D.W.2 Arif Akhtar who is tenant in the suit



property has stated that the suit property is a double storey building. Sushil Chandra Mishra resides on the upper floor with his family and on the ground floor this witness has a tailoring shop for 50-60 years past. This witness has stated that originally the property belonged to Mahadeo Sah who had two wives namely Nehra Devi and Lachhiya Devi. Mahadeo Sah was issueless. This witness stated further that Mahadeo Sah had adopted Munna Sah during his lifetime and after his death both the wives of Mahadeo Sah namely Nehra Devi and Lachhiya Devi adopted Ramashish Sah, son of Munna sah.

21. D.W.3 Md. Daud is the resident of the vicinity to the suit property. He is unaware of the execution of the Will deed by Lachhiya Devi in favour of son of Ramawtar Choudhary.

22. D.W.4 Md. Hafiz is tenant in the suit property since 1982. Initially, he was the tenant of Lachhiya Devi and after her death he became tenant of Ramashish Sah and Munna Sah. Lachhiya Devi and Nehra Devi adopted Ramashish Sah and after their death Ramashish Sah performed their *Shradh* ceremony. Ramashish Sah and Munna Sah sold that property to Sushil Chandra Mishra and this witness had never seen the plaintiff/appellant Ramawatar Choudhary or his son Champa



Lal Choudhary in the house of Lachhiya Devi.

23. D.W.5 is Sushil Chandra Mishra (respondent no.1). He stated that he had purchased the property in the year 1989 which was within the knowledge of the plaintiff/appellant Ramawtar Chopudhary. After purchase, he was given in possession over that property and he is also residing in the house situated thereon. He stated that he had purchased the property from Munna Sah and Ramashish Sah by three registered sale deeds Ext.A, A/1 and A/2. Ramawtar Choudhary (plaintiff/appellant) is the identifier of those sale deeds.

24. The learned counsel for the appellant has submitted that respondent no.1 Sushil Chandra Mishra has no locus to file a caveat as he is not the legal heir of the testatrix. Only the legal heirs of the testatrix can file a caveat.

25. From bare perusal of Section 283(1) (c) of the Indian Succession Act, 1925 (for short 'the Act of 1925'), it appears that any person who has an interest in the property has a caveatable right. Section 283(1)(c) of 'the Act of 1925' is extracted hereunder:-

“(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.”

26. I am of the view that he (respondent no.1) has a caveatable right as per Section 283 (1)(c) of ‘the Act of 1925’.

27. It is settled principle of law that the plaintiff has to prove his case. It is the burden on the plaintiff/appellant to prove the fact that the Will deed (Ext.1) was genuine and it was executed by the testatrix with her free will without threat, coercion and inducement and/or without any consideration in lieu thereof. Following are the reasons that the Will deed cannot be accepted as genuine:

(i). The plaintiff/respondent could not explain the reasons by cogent evidence that from where he got the knowledge about the execution of the Will deed, when the deed itself was in favour of his son. He did not mention in his plaint/petition about the source of his knowledge about the execution of the deed. For the first time, in his deposition he stated that the deed was discovered from a box after the death of his son. As per the deposition of the plaintiff/appellant, Mukesh Choudhary (P.W.3) informed him about the presence of the Will



deed in the box in the maternal house of Champa Lal Choudhary, but it is surprising that Mukesh Choudhary did not even whisper about this fact during his deposition. It is also surprising that during 11 years of execution of the Will deed, the plaintiff was not aware of that deed when the deed was in favour of his own son Champa Lal Choudhary. Champa Lal Choudhary during his life time had never told about the existence of that deed to his father, the plaintiff/appellant.

(ii). From bare perusal of Ext.1, the alleged Will deed, it appears that the testatrix had not mentioned the reasons for execution of the Will deed in favour of Champa Lal Choudhary. She did not mention that Champa Lal Choudhary was serving her or she had love and affection with Champa Lal Choudhary. She did not even mention as to how Champa Lal Choudhary or his father Ramawtar Choudhry were related to her or known to her.

(iii). The plaintiff/appellant, prior to the present case, had already filed T.S.No. 22 of 2001 in



respect of the same property, but he did not mention this fact in his plaint/petition for the reasons best known to him.

(iv). The plaintiff/appellant admitted during his deposition that he is the identifier of the sale deed executed by Munna Choudhary and Ramashish Choudhary in favour of Sushil Chandra Mishra through Ext.A, Ext.A/1 and Ext.A/2.

28. On the basis of the above-noted observation, it appears that the Will deed (Ext.1) is not a genuine deed and no Letters of Administration can be granted on it.

29. In view of aforesaid observation, the appeal is dismissed with costs.

(Nawneet Kumar Pandey, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	03.04.2024
Uploading Date	08. 10.2024
Transmission Date	

