

IN THE HIGH COURT OF JUDICATURE AT PATNA
TEST CASE No.9 of 2015

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In The Matter Of Goods Of Late Ramashish Rai son of Late Kokil Rai,
resident of village Harnichak, P.S.- Beaur, District- Patna.

AND

In the matter of an application filed under Sections 273, 276 r/w 300 of the
Indian Succession Act for grant of Letter of Administration of the Registered
Will 19.12.2001.

AND

In the matter of an application filed by

Vibha Kumari, wife of Sri Keshav Kumar, Resident of Village-Kalyanpur,
P.S. and P.O-Fatuha, District-Patna.

.....Applicant

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Appearance :

For the Petitioner/s : Mr. Arvind Prasad Singh, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 11-07-2024

Heard learned counsel for the applicant and perused
the record.

02. This application has been filed under Sections 273,
276 r/w 300 of the Indian Succession Act for grant of Letters of
Administration of the registered Will dated 19.12.2001 executed
by late Ramashish Rai. The registered will has been executed in
favour of the applicant, namely Vibha Kumari, wife of Sri
Keshav Kumar.

03. It has been submitted on behalf of the applicant
that Late Ramashish Rai executed the registered Will dated
19.12.2001 voluntarily in good physical health and sound state of



mind, after understanding the contents of the Will, without any undue influence or coercion of anybody, in presence of two attesting witnesses, namely, (i) Panchu Rai, Son of late Shiv Nath Rai, Resident of Village Harnichak, PO-Anishabad P.S.- Beaur, District- Patna (own nephew of late Ramashish Rai and (ii) Rameshwar Singh Yadav, Son of late Nagina Singh Yadav, Resident of Village Harnichak, PO-Anishabad P.S.- Beaur, District- Patna. The said testator, late Ramashish Rai, was a Hindu governed by the Mitakshara School of Hindu Law and was permanently residing at Village Harnichak, PO-Anishabad P.S.- Beaur, District- Patna. The testator died on 11.08.2008 at about 12:00 PM at his permanent residence at Village-Harnichak, PS-Phulwarisharif (at present PS-Beaur) District-Patna and the Will dated 19.12.2001 is the last Will and testament of the testator. Late Ramashish Rai was the maternal grandfather of the applicant and he died leaving behind his two near relatives, namely, Sri Vikash Prasad, Son of Sri Rajendra Singh, Mohalla-Dujara, PO-GPO, PS-Budha Colony, District Patna and Smt. Sunita Kumari, wife of Sri Ravi Kumar, Anisabad, PO-Anisabad, PS-Beaur, District-Patna. The property covered under the Will as mentioned in Schedule-A was self-acquired property of the testator and on that authority, he bequeathed the property of his own through registered Will in favour of his granddaughter



(*natini*). The applicant has been named as sole beneficiary/legatee of the registered will dated 19.12.2001 executed by the testator. The amount of asset, which are likely to come in the hands of the applicant is approximately Rs. 50,00,000/- (fifty lacs rupees), which is mentioned in Schedule-A of the plaint.

04. The applicant has also named two near relatives of the testator and this Court vide order dated 29.10.2015 directed to issue special citation to both near relatives by both processes, i.e., under ordinary as well as speed post and also directed the applicant to take steps for publication of general citation in two local daily newspaper, namely, *Prabhat Khabar* (Hindi) and Times of India (English). Thereafter, affidavit filed on behalf of the applicant in support of publication of general citation in Times of India (English) and *Prabhat Khabar* (Hindi), both dated 25.11.2015, was accepted and was kept on record and special citation upon both near relatives was declared to be validly served. Both the near relatives, namely Vikash Kumar and Smt. Sunita Kumari appeared through *Vakalatnama* in the test case. The aforesaid NRs did not choose to file any caveat or objection to grant of letter of administration in favour the applicant. Moreover, none of the appeared near relatives cross examined the witnesses produced on behalf of the applicant despite their



appearance through their respective Advocate.

05. In support of the case, two attesting witnesses of the Will have been examined on behalf of the applicant, namely, Rameshwar Singh Yadav (AW-1) and Panchu Rai (AW-2) and applicant examined as AW-3. The AW-1, Rameshwar Singh Yadav has been examined on 06.12.2018. He, in his deposition, stated that the contents of examination-in-chief filed by him on affidavit are true and correct. He has further categorically stated in his deposition that the testator was his co-villager as well as his brother. He further stated that on 19.12.2001, the testator called him at his house and informed that he intends to execute a Will in favour of his granddaughter (*natini*) Bibha Kumari. He further stated that he put his signature as witness No.1 over the Will. He further stated that witness Panchu Rai was also present at the relevant time. The witness has categorically stated that at the time of putting the left thumb impression, the testator was physically and mentally fit and he has not executed the Will under any pressure or coercion rather on his own will and volition. This witness had read the entire Will and identified the original registered will dated 19.12.2001 executed by the testator, namely Late Ramashish Rai, which has been marked as Exhibit-1. The witness further stated that the testator, in his presence, had put his thumb impression (LTI) over the Will and he identified



the LTI of the testator, Ramashish Rai over the Will, which has been marked as Exhibit-2 series. He further stated in his deposition that the testator was made to understand the contents of the Will and only thereafter, he put his thumb impression and he was one of the attesting witnesses, had put his signature on the second page of the Will, he identified his signature at Page-2 of the Will, which has been marked as Exhibit-3. The witness also stated that AW-2, Panchu Rai has identified the thumb impression of the Late Ramashish Rai at all the pages of the Will.

06. AW-2, namely Panchu Rai, has been examined on 14.05.2024. This witness, in his examination-in-chief, stated that the contents of examination-in-chief filed by him on affidavit are true and correct. He further stated that the testator, late Ramashish Rai, was his own uncle and has executed and registered his will on 19.12.2001 in favour of Vibha Kumari (applicant). He also stated that the applicant Vibha Kumari is the granddaughter of the testator and when she was aged about 1 and $\frac{1}{2}$ years, her mother died. He further stated that the testator put his left thumb impression on each pages of the Will before this witness and the witness has written the name of testator besides his LTI. He further stated that he put his signature beneath the signature/LTI of Ramashish Rai and he has also proved the LTI of the testator on each pages of the Will dated 19.12.2001



(Exhibit-2 series). He further identified his signatures on the Will, which have been marked as Exhibit-4 series. This witness has stated that other witness, Rameshwar Singh Yadav (AW-1), who is his co-villager, also put his signatures on the Will dated 19.12.2001. He identified the signatures of the AW-1 on the Will (Exhibit-3). This witness categorically stated that after execution of the Will, the testator along with witnesses went to registry office for registration and the testator appeared before the Registry and completed all formalities of registration. This witness categorically stated that at the time of execution of the Will, the testator was physically fit and was of sound mind and the Will was not executed under any force, coercion or duress.

07. AW-3 namely Vibha Kumari is the applicant herself. The applicant has also been examined on 14.05.2024. She, in her examination-in-chief, stated that the contents of examination-in-chief filed by her on affidavit are true and correct. This witness has stated that testator was her own maternal grandfather and he bequeathed five and half decimal of land in his Will in her favour. She further stated that she came to know about the Will executed by her grandfather in her favour only in 2012, when her marriage was fixed, through her maternal uncle, Shri Panchu Rai, who told her that her grandfather has executed a Will in her favour for five and half decimal of land



and her maternal uncle also told her that he put his signature on the Will as attesting witness. She has also stated that the valuation of the properties has been correctly given by her.

08. Learned counsel for the applicant submits that in spite of service of notices none have come to object the grant of letters of administration of this registered will. In the present case, the Will and its execution has been proved according to provisions of Indian Evidence Act by both the attesting witnesses. It has also been pointed out that the Will is a registered Will of the testator as he himself appeared before the registrar and admitted execution of the Will. There is no scope of any suspicion nor anybody has challenged the will in question. The learned counsel for the applicant referred to the evidence of the witnesses to support his contentions.

09. In view of the aforesaid facts and circumstances, both the attesting witnesses have proved the Will before this Court. All witnesses in categorical term have stated that at the time of execution of Will late Ramashish Rai was in a good physical and mental health and he voluntarily appeared before the registry office and completed all the formalities and his LTI has been identified by the witnesses.

10. On analysis of the evidence(s) which have been deposed by the witnesses, it is very much clear that late



Ramashish Rai, in well state of conscious mind, without any coercion and pressure, fully understanding the contents of the Will, had put his LTI on each and every page of the Will and on his request both the attesting witnesses put their respective signatures in the body of the Will which has been proved by the witnesses as discussed herein-above.

Hence, this Court is of considered view that the testator, Ramashish Rai, executed the Will in favour of applicant, Vibha Kumari, who is the sole legatee/beneficiary of the Will, in a proper state of mind with proper understanding of the contents.

11. Accordingly, this application is allowed. Let the Letters of Administration of Will dated 19.12.2001 be issued in favour of applicant of this case with a copy of the Will annexed thereof, which shall have effect throughout the territory of India.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.07.2024
Transmission Date	NA

