

IN THE HIGH COURT OF JUDICATURE AT PATNA
TEST CASE No.8 of 2012

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In the Matter of an Estate of Late Smt. Vishnu Priya, Wife of Late Satchidanand Prasad, Resident of Mohalla-LIC Colony, Sheopuri, PS-Shashtri Nagar, Patna-800023

And

In the matter of an application filed under Sections 276 r/w 300 of the Indian Succession Act for grant of Probate of the Will dated 11.02.2009.

AND

In the matter of an application filed by

Saurabh Prateek, Son of Sri Mukul Prasad, Advocate, resident of Mohalla Babu Para, PS-Godda Town, District-Godda (Jharkhand), presently residing at Mohalla-LIC Colony, Sheopuri, P.S.-Shashtri Nagar, Town & District-Patna.

... .. Applicant

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Appearance :

For the Petitioner/s	:	Mr. Ashutosh Jha, Advocate Mr. Abhinav Kumar, Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 29-08-2024

Heard learned counsel for the applicant.

02. This application has been filed under Sections 276 read with Section 300 of the Indian Succession Act by the applicant for grant of Probate of the Will dated 11.02.2009 executed by one Smt. Vishnu Priya. The Will has been executed in favour of the applicant namely, Saurabh Prateek, son of Sri Mukul Prasad whereby father of applicant, Sri Mukul Prasad has been appointed executor and trustee of the aforesaid Will dated 11.02.2009.

03. It has been submitted on behalf of the applicant



that late Smt. Vishnu Priya executed the Will dated 11.02.2009 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) Chitranjan Kumar Verma (AW-1), Son of late Lala Satish Chandra Verma, resident of East Patel NagarNagar, Road No. 2, P.S.-Shashtri Nagar, Patna and (ii) Mukul Prasad (AW-2), Son of late Sachchidanand Prasad, resident of Mohalla- LIC Colony, Shivpuri, P.S.-Shashtri Nagar, District-Patna. It has further been submitted that the testatrix, late Smt. Vishnu Priya, was a Hindu governed by the Mitakshara School of Hindu Law and was permanently residing at Mohalla- LIC Colony, Shivpuri, P.S.-Shashtri Nagar, District-Patna, which falls within the territorial jurisdiction of this Court. It has further been submitted that the testatrix along with applicant's father and mother went to Godda for submitting her annual life certificate for pension purposes where on 29.01.2012 at 09:00 PM while she was sleeping, died and the same was detected only in the morning and there was no occasion for her medical treatment. At the time of death, the testatrix was aged about 79 years. It has further been submitted that the Will dated 11.02.2009 is the last Will of the testatrix, which was duly executed before the Notary Public, Patna on 11.02.2009 and the



Notary Public authenticated the said Will on the same day at Patna. The husband of the testatrix predeceased her long back and the testatrix, late Smt. Vishnu Priya died leaving behind three sons, namely (1) Sri Mukul Prasad, (ii) Kumud Prasad and (iii) Sri Ranjit Prasad and one daughter, namely (iv) Mrs. Ranjana Prasad. The testatrix executed the Will after taking consent of her sons and other relatives who also accepted the acts of the testatrix in presence of the witnesses before the Notary Public. The property covered under the Will is the self acquired property of the testatrix and as the sole owner she bequeathed the property of her own through Will in favour of her grandson, namely Saurabh Prateek and the testatrix has also appointed her son Mukul Prasad as the Executor of the Will dated 11.02.2009. The applicant has been named as sole beneficiary/legatee of the Will dated 11.02.2009 executed by the testatrix. The amount of asset, which are likely to come in the hands of the applicant is approximately Rs. 15,00,000/- (Rs. fifteen lacs only), which is mentioned in Schedule-1 of the plaint. The amount of liabilities and other deduction are given in Schedule-B of the plaint.

04. The applicant has named all the legal heirs and arrayed as near relatives (NRs) of the testatrix and this Court vide order dated 29.08.2013 directed to take steps for issuance



of special citation to the NRs under both modes 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, vide order dated 28.08.2014, service of notice upon NRs 2 and 4 was declared served and the 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 28.02.2014, was accepted and was kept on record. After that applicant was further directed to take fresh steps for issuance of fresh Special Citation to NR-3 at his present and correct address and vide order dated 19.05.2017, special citation upon NR-3 was also declared as validly served. However, special citation having been served validly upon all the NRs, only one of them, namely Mukul Prasad (NR-1) appeared through *Vakalatnama* in the Test Case. The aforesaid NR-3 did not choose to file any caveat or objection to grant of probate in favour the applicant. Moreover, the appeared Near Relative did not cross examine the witnesses produced on behalf of the applicant though he was represented through learned counsel.

05. In support of the case, altogether three witnesses, including two attesting witness of the Will, have been examined on behalf of the applicant, namely Chitranjan Kumar Verma



(AW-1), Mukul Prasad (AW-2) and the applicant-Saurabh Prateek himself examined as AW-3.

AW-1, Chitranjan Kumar Verma, has been examined on 11.10.2018. He has stated in his evidence that he knew the testatrix and the applicant is her grandson. He categorically stated that he had discussion with the testatrix and the testatrix asked him to prepare a draft of Will and the Will was prepared under the instruction of testatrix and after its preparation it was shown to the testatrix. He further stated that on being satisfied with the contents of the Will, the testatrix put her signature over the Will and thereafter she made request to the witness to stand as attesting witness and put his signature over the Will. This witness identified the original will dated 11.02.2009 executed by the testatrix, namely, late Smt. Vishnu Priya and her signature over the Will, which have been marked as Exhibit-1 and Exhibit-1/A, respectively. The witness also identified his own signature over the Will, which has been marked as Exhibit-1/B. Upon Court's question, the witness categorically stated that when testatrix was putting her signature, Sri Mukul Prasad, was also present there and he had also put his signature over the Will as attesting witness and none else was present. He also stated that at the time of Will, he and Shri Mukul Prasad alone were present. The witness also identified the signature of another



attesting witness, namely Mukul Prasad, which has been marked as Exhibit 1/C. The witness lastly deposed that in the last paragraph of the Will, it has been clearly stated that the testatrix had read the contents of the Will, understood the same and put her signature.

06. AW-2, namely Mukul Prasad has been examined on 29.11.2018. This witness, in his deposition, stated that the testatrix was his mother and she executed the Will on 11.02.2009 (Exhibit-1). He further stated that his mother died on 29.01.2012. She was working in the Education Department and she superannuated from there. The witness categorically stated that at the time of execution of Will, his mother was in a good in mental and physical health and she was capable of reading, writing and understanding the contents of the Will. He further stated that the testatrix after retirement used to live with him and also used to go to his native place at Godda. He further stated that his mother died at Godda. He also stated that as the testatrix used to live with him, she was very happy with the services rendered by him and his family. On seeing the Will, the witness identified the Will (Exhibit-1), signature of testatrix over the Will (Exhibit-1/A), signature of attesting witness, Chitranjan Kumar Verma (Exhibit-1/B) and also his signature (Exhibit-1/C). This witness also deposed that the Will was read in his presence



by his mother and she understood the same and the contents of the Will are correct. The witness lastly deposed that he and Chitranjan Kumar Verma became the witnesses to the Will on saying of his mother.

07. AW-3 namely Saurabh Prateek is the applicant himself. The applicant has been examined on 25.07.2024. This witness has stated that testatrix was her grandmother who executed the Will in his favour on 11.02.2009 bequeathing her entire property in his favour. He further deposed that his grandmother used to work in the Department of Education in the Office of District Education Officer, Patna. He further stated that his grandmother retired in the year 1990 and died on 29.01.2012,. The witness categorically stated that at the time of preparation of the Will, his mother and the attesting witnesses, namely Mukul Prasad (father of the applicant) and Chitranjan Kumar Verma were present. He further stated that his grandmother was in sound mental and physical condition while executing the Will in his favour and the said Will is the last Will of his grandmother. The witness identified the Will dated 11.02.2009 (Exhibit-1).

08. Learned counsel for the applicant further submits that none of the near relatives have objected to the grant of probate of this Will in favour of the applicant. In the present



case, the will has already been proved according to provisions of Indian Evidence Act by the witnesses for the applicant including the two attesting witnesses of the Will and the Will has been correctly proved. It has also been proved by the witnesses that the testatrix was in sound state of body and mind at the time of execution of Will on 11.02.2009. There is no scope of any suspicion nor anybody has challenged the Will in question.

09. Having regard to the aforesaid facts and circumstances and considering the submission made by the learned counsel for the applicant, I am of the view that the witnesses for the applicant including the attesting witnesses have proved the Will. All witnesses in categorical terms have stated that at the time of execution of Will, Late Smt. Vishnu Priya was in a good physical and mental health and she voluntarily executed the Will in favour of the legatee, Saurabh Prateek, completing the formalities and her signature has also 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 Smt. Vishnu Priya, in good state of conscious mind, without any coercion and pressure, fully understanding the contents of the Will, had put her signature on the Will and on her request 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, I am of the considered view that the testatrix, Late Smt. Vishnu Priya, executed the Will in favour of legatee/beneficiary, Saurabh Prateek (applicant), by appointing his father, namely Mukul Prasad as executor of the aforesaid Will dated 11.02.2009 in a proper state of mind with proper understanding of the contents of the Will.

11. However, on going through the contents of the petition as well as the original Will, it transpires that Sri Mukul Prasad is the person who has been appointed executor under the Will dated 11.02.2009 executed by late Vishnu Priya, mentioning therein that in case Mukul Prasad predeceased the testatrix, her grandson-Saurabh Prateek (applicant) will become the executor of the Will. In the present case, the executor of the Will, Sri Mukul Prasad, is still alive, who has been examined as AW-2 and under the provisions of Section 222 of the Indian Succession Act, 1926, Probate shall be granted only to an Executor appointed by the Will, which reads as under:

“222. Probate only to appointed executor.—(1) Probate shall be granted only to an executor appointed by the will.

(2) The appointment may be expressed or by necessary implication.”

12. Apparently, in the present case, the applicant is not



an executor under the Will dated 11.02.2009, therefore, the Probate of the Will cannot be granted to the applicant. However, in the facts and circumstance of the case, it is appropriate that Letters of Administration of the Will dated 11.02.2009 be issued in favour of the applicant.

13. Accordingly, this application is allowed. Let the Letters of Administration of the Will dated 11.02.2009 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	AFR
CAV DATE	NA
Uploading Date	04.09.2024
Transmission Date	NA

