

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.39 of 2021

1. Anumukta Shashihar W/o Raj Kamal Shashihar, Resident of Village Kurson, PO Chunni, PS Madhepur, District - Madhubani, presently residing at C- 6, Malancha, 2 1/2 No. Airport Gate PO Rajbari PS Dum-Dum, Kolkata 700081 District North 24 Parganas (West Bengal).
2. Anurag Chandel, Son of Raj Kamal Shashihar, Resident of Village Kurson, PO Chunni, PS Madhepur, District - Madhubani, presently residing at C- 6, Malancha, 2 1/2 No. Airport Gate PO Rajbari PS Dum-Dum, Kolkata 700081 District North 24 Parganas (West Bengal).
3. Anubhav Chandel, Son of Raj Kamal Shashihar, Resident of Village Kurson, PO Chunni, PS Madhepur, District - Madhubani, presently residing at C- 6, Malancha, 2 1/2 No. Airport Gate PO Rajbari PS Dum-Dum, Kolkata 700081 District North 24 Parganas (West Bengal).

... .. Appellant/s

Versus

1. The Estate of Late Nageshwar Choudhary S/o Late Narayan Dutt Choudhary, resident of Village Kurson, PO Chunni, PS Madhepur, District Madhubani, PIN 847408 lastly residing at house of Prashant Das Gupta, Raj Bari Coloney, Dum-Dum, Kolkatta 700081.
2. Urmila Devi, W/o Late Nageshwar Choudhary, resident of Village Kurson, PO Chunni, PS Madhepur, District Madhubani, PIN 847408.
3. Raj Mohan Choudhary, S/o Late Nageshwar Choudhary, resident of Village Kurson, PO Chunni, PS Madhepur, District Madhubani, PIN 847408 presently residing at house of Prashant Das Gupta, Raj Bari Coloney, Dum-Dum, Kolkatta 700081.
4. Raj Kamal Shashihar wso Late Nageshwar Choudhary, resident of Village Kurson, PO Chunni, PS Madhepur, District Madhubani, presently residing at C- 6, Malancha, 2 1/2 No. Airport Gate PO Rajbari PS Dum-Dum, Kolkatta - 700081 District North 24 Parganas (West Bengal).
5. Indira Devi, D/o Late Nageshwar Choudhary, W/o Sri Gopal Krishna Singh, Resident of Krishna Gali No. 18 House No. 87, Motor Brand Extension, Dadarpur, New Delhi 110041.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anil Kumar Jha, Sr. Advocate Mr. Sanat Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Rohit Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT

Date: 08-08-2025

Heard learned counsel for the appellant and
learned counsel for the respondents.



2. The present appeal has been filed under section 299 of the Indian Succession Act, 1925. Against the order dated 27.01.2020 by Learned District Judge Madhubani in Probate Case No. 10 of 2018 in which the probate case has been dismissed on the ground of error of records.

3. The brief fact of the case is that the will dated 31.10.2003 executed by the testator Nageshwar Choudhary in which the immovable property the land as 4 kattha 15 dhur situated at Tengari, Khata no.80 khesra no.77 jamabandi no. 156 corresponding to 92 Kurson District Madhubani is in favour of the appellant no. 1 the daughter in law of the testator and movable property viz ornament & jewelries to his next son Raj Mohan Choudhary. The said will was the last will of the testator and it was executed by the testator in his full senses and consciousness before the witnesses without any coercion or compulsion. The appellants said that the testator had appointed respondent no. 4 as executor of the will but the executor did not take any step for probate of the will or issuance of letter of administration due to paucity of time and made the appellants suffer and then finally he renounced the executor-ship on 24.01.2018 handed over the original will to the appellant no. 1 for getting the Probate of the will. Earlier the appellant no. 1 had



filed the petition but latter on the appellants no. 2&3 also joined the petition for probate by adding themselves as beneficiary.

4. In the present Probate Case the petitioners/ appellants have examined four witnesses in which AW-1 In support of the Probate case the Appellant filed Ext.1 will dated 31.10.2003 and Ext. 2 the death certificate of the deceased testator

5. Learned Counsel for the appellant submitted that the impugned judgment is not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment. He further submitted that after filing of aforesaid Probate case the respondent nos. 2, 3 and 5 herein appeared and filed their written statement admitting the execution of will in favour of present appellants and also admitting the fact that it was the last will of the deceased testator which was executed in sound state of physical and mental health and without any pressure, coercion or influence. He further submitted that they have no objection if probate/Letters of administration be granted in favour of present appellants.

5.i. He further submitted that the will dated 3.10.2003 describes the land as 4 kattha 15 dhur situated at



Tengari, khata no. 80 khesra no. 77 jamabandi no. 156 corresponding to 92 Kurson District Madhubani which is the subject land of the application for the probate. The details are sufficient to describe and identify the land and also specifies that the said land is within territorial jurisdiction of the learned Trial Court. The death certificate also specifies that the death has taken place in village Kurson district Madhubani which falls within the territorial jurisdiction of the learned Trial Court

5.ii. He further submitted that Learned Trial Court had wrongly held that the will does not have description of the land and had no jurisdiction which is apparently wrong and an error of record as it is clear from the detailed description of the land falling within Madhubani. Learned Trial Court dismissed the case and stated that the testator had not executed the will in his sound and disposing state of mind which is completely error of record as all the witness attesting witnesses have clearly stated that the Testator was in sound physical and mental health while executing the Will. The learned Trial Court also recorded its doubt on place of death of the testator and presence of testator in the village of Madhubani on 10.03.2003 which is against the evidence adduced including the Death Certificate.



5.iii. He further submitted that the case was not contested by any person and all the family members /descendants of the testator and his wife support the legatee that the Will was the last will of the testator, it was executed while the testator was in sound state of mind, they have no objection to the consequence of Will being conveyed to the Legatee. The witnesses to the execution of Will have appeared before the learned Trial Court and fully supported the case of the Legatee. All the heirs of the Testator have appeared in present appeal and filed their affidavits and supported the claim of the Legatee and they appeared at the time of hearing also and supported the case of the Legatee.

6. On deeply scrutinize facts and circumstances of the present case this Court is at view that Respondent no. 2 to 5 in para no. 4 of their respective counter affidavit stated that the Testator had acquired immovable as well as movable properties from his personal income and the self acquired property of the Testator. Respondent no 2 the wife of the testator in para no. 14 of her counter affidavit stated that she has no objection to the probate being granted to the appellants since that would be fulfilling the desires of her deceased husband/testator of the will. Respondent no. 3 the son of the testator in para no.13 of his



counter affidavit stated that if the letter of administration/probate is issued in favour of the petitioner/ appellants he has no objection to the same. Respondent no. 4 son of the testator in para no. 15 of his counter affidavit stated that if the letter of administration/probate is issued in favour of the petitioner/ appellants he has no objection to the same. Respondent no.5 daughter of Testator stated in para no. 13 of her counter affidavit that if the letter of administration / probate is issued in favour of the petitioner/ appellant she has no objection to the same.

7. Moreover, the demarcation of land for its identification has been specifically provided as the land 4 kattha 15 dhur situated at Tengari, Khata no.80 khesra no.77 jamabandi no. 156 corresponding to 92 Kurson District Madhubani which are sufficient description for the determination of the specified land despite that the learned court below dismissed the petition on technical grounds. Further the executor of the will renounced his executor-ship through his acknowledgment and handed over to the appellants. It is the settled law that in the absence of executor a petition for Letters of Administration can be filed by the legal heirs/legatees or beneficiaries under the will.

8. Further it established that the grant of probate as well as the proceeding for the grant of letter of administration



is initiated for protecting the interest of the legatees under the will. Also there is no conceivable reason as to why the law must be regarded as prohibiting a beneficiary from seeking to continue the proceedings if the sole executor renounces his executor-ship for seeking the issuance of letter of administration. Further it must be noted, that this right which is available is recognized with reference to a beneficiary under the Will. So, it can not be said that beneficiary under the Will is prohibited to seek the issuance letter of administration It has been held by the Hon'ble Delhi High Court in the case of ***Radhika Kapur v. State, 2017 (2) AD (Del) 713: 2017 (238) DLT 441 (Del)*** that

*“there are no impediment against relief of grant of probate claimed in the petition when Petitioner being sole beneficiary under Will which is proved to have been executed validly by the testator in absence of proof to contrary, the said Will being his last Will in testament so Letters of administration with Will are granted in favour of petitioner in respect of the estate left behind by him subject to requisite court fees/stamp duty being furnished in accord with the valuation report”. It has been held by the Hon'ble Gujarat High Court in the case of ***Lallabhai Chhotabhai v. Vithalbhar****



Parshottambha, AIR 1982 Guj 222: 1982 Guj LH 280 that “Appointment of executor may be express or by implication as given in the three Illustrations to the section. But there can be no doubt that no person not named in the Will or inferred by implication from the terms of the Will, can function as executor. The appointment of executor emanates from the terms of the Will and the property of the testator vests in him from his death. An administrator takes charge only by order of court from the date of the order, and the moment such Letters are granted all rights belonging to the intestate vest in the administrator as effectively as if administration had been granted at the moment after his death. If the executor dies it is the court that should intervene under the provisions of the Indian Succession Act. A universal legatee is not entitled to probate, but is entitled to Letters of Administration. Probate can be granted only to an executor appointed by the Will and that the appointment may be in express terms or it may be inferred by necessary implication.”

9. For the reasons as stated above, this appeal is allowed and the order dated 27.01.2020 by Learned District Judge Madhubani in Probate Case No. 10 of 2018 is set aside. Appellant is entitled for grant of Letters of Administration of



will dated 31.10.2003 executed by Nageshwar Choudhary.

10. Accordingly, this appeal is allowed.

11. Office is directed to send back the trial Court records and proceedings along with a copy of this judgment to the trial Court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	NAFR
CAV DATE	01.07.2025.
Uploading Date	08.08.2025.
Transmission Date	NA

