

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.110 of 2018

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Smt. Pushpa Devi Wife of Bijay Prasad Resident of Village/Mohalla - Umed Nagar, P.O. P.S. - Deep Nagar, District - Nalanda.

... .. Appellant/s

Versus

1. Easate Of Rupan Mahto and Anr
2. Ashok Kumar Son of Late Rupan Mahto Resident of Village/Mohalla - Umed Nagar, P.O. P.S. - Deep Nagar, District - Nalanda.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajendra Prasad, Sr. Advocate. Mr. Pramod Kumar, Advocate. Mr. Ritesh Kumar, Advocate. Mr. Dharendra Kumar, Advocate. Ms. Srishti, Advocate.
For the Respondent/s	:	Mr. Santosh Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 22-01-2026

Heard learned counsel appearing on behalf of the
appellant and learned counsel for the respondents.

2. The First Appeal has been preferred by the appellant against the impugned order dated 02.07.2018 passed in Probate Case No. 16 of 2009 by the Presiding Officer, Fast Track Court- 1, Nalanda at Bihar Sharif (for short, the Probate Court). The Probate Court vide impugned order dated 02.07.2018 has dismissed the petition filed by the appellant (original petitioner) under the provision of Indian Succession Act, 1925 (for short, the Act, 1925) as the executor appointed by Late Rupan Mahto by his will and testament dated 02.12.2006.

3. The petitioner (appellant hereof) is named



executor as well as she is the sole executor in the said Will. The property is situated in Village – Umed Nagar, P.S.-Deep Nagar, District – Nalanda and also in Village – Meghi Nagma, Thana No. 319, Khata No. 705, Plot No. 4306, Area – ½ Dec, District – Nalanda.

4. The brief facts of the case, is that, one Rupan Mahto, the father-in-law of the appellant, executed a Will dated 02.12.2006 in favour of his daughter-in-law, namely Pushpa Devi, who is the petitioner in Probate (T.S.) Case No. 16 of 2009, and the appellant hereof. The said Will was executed out of love and affection, with the consent of the nearest relatives, and out of the free and sweet will of the testator, as his last Will and testament. The Probate Court has recorded that Rupan Mahto had five sons and three daughters. There was oral partition among all sons of Rupan Mahto. However, none of the parties gave details of the property allotted to each member in the said partition. An objection was filed by Ashok Kumar that Rupan Mahto had never been residing with Pushpa Devi, rather he lived separately. All his sons and daughters were rendering service to Rupan Mahto and he never showed his prudent desire to execute the registered deed of Will.

5. It is informed that a caveat was filed by



Jugeshwar Mahto and others and subsequently a compromise petition was filed stating therein that after receiving notice of this case, the parties, namely, Jugeshwar Mahto, Siddheshwar Mahto, Vijay Mahto, Manti Devi, Barti Devi, except Ishari Mahto, as mentioned in Para-3 of the petition, with the advice of other relatives, they wanted not to dispute the genuinity of the Will dated 02.12.2006 executed by Rupan Mahto in favour of Pushpa Devi – the petitioner of the Probate Case and appellant hereof and they had no objection in granting Probate in favour of the petitioner-appellant. Respondent No. 2-Ashok Kumar had not filed any affidavit that he don't want to contest the suit nor he was party to the said compromise petition which was jointly filed on behalf of the above parties including the caveator Jugeshwar Mahto.

6. The Probate Court framed following issues on the petition of the parties:

i. *Whether the registered deed of Will dated 02.12.2006 executed by Rupan Mahto in favour of Pushpa Devi, petitioner / plaintiff is duly executed and genuine and free from all suspicious circumstances?*

ii. *Whether the Will dated 02.12.2006 is last Will of Rupan Mahto ?*

7. The issue was framed after the Probate Case No. 16 of 2009 was converted into Title Suit. Now, the said Title Suit was contested and Probate Petition filed on behalf of the petitioner dated 04.11.2009 was dismissed against which the



present First Appeal has been preferred by the appellant.

8. It has been recorded by the Probate Court that after examination of the witnesses and material evidence on record, the Will deed dated 02.12.2006 executed by Rupan Mahto in favour of Pushpa Devi was found to be surrounded with suspicious circumstances resulting in the Will dated 02.012.2006, not found to be probated.

ARGUMENT OF THE PARTIES

9. Learned counsel for the appellant submitted that the question for determination in the present appeal is, as to whether, the Probate court was having jurisdiction to disallow the appointment of the petitioner-appellant as the executor appointed by the testatrix by entering into to decide the Title based on the Will? Learned Senior Counsel, in this regard, relied upon the judgment of the Apex Court rendered in the case of *Krishna Kumar Birla Vs. Rajendra Singh Lodha & Ors.*, reported in *(2008) 4 SCC 300* and *Kanwarjit Singh Dhillon Vs. Hardyal Singh Dhillon*, reported in *(2007) 11 SCC 357*, to contend that jurisdiction of the Probate court has very limited scope, i.e. only to decide the question relating to genuineness of a Will, but it has no power, jurisdiction and authority to decide the Right, Title and Interest of an executor of Will upon the



property in question. Thus, he submitted that the learned District Court has exceeded its jurisdiction in deciding the Probate (T.S.) Case vide order dated 02.07.2018.

10. He further informs that now the respective parties want to buy peace of mind by entering into agreement to enter into the compromise, for which the parties have filed I.A. No. 2 of 2025 under Order 23 Rule 3 read with Section 151 of the Code of Civil Procedure, 1908, during the pendency of the present appeal and the same is required to be given effect. He admits that the property which has been executed by way of Will in favour of the appellant by late Rupan Mahto, the respondent no.2 has no interest in the said property. At the time of pending of the probate case, the other coparcener had refused to contest the suit by entering in compromise as such the finding of the probate in respect of the very genuineness of the Will now has no relevance as the compromise has been entered not under coercion or under influence.

11. Mr. Santosh Kuamr Sinha No.2, learned counsel appearing on behalf of the respondent no.2 reiterating the event in respect of the compromise which was entered into by the other heirs of late Rupan Mahto, as has been recorded in Para-5 of the Judgment dated 02.07.2018, submitted that the



respondent also being one of the heirs of late Rupan Mahto has entered into compromise with the petitioner (appellant hereof) and has filed a compromise petition during the pendency of the present first appeal on 07.10.2025.

ANALYSIS AND CONCLUSION

12. Heard the parties.

13. Before I enter into the legality of the impugned order/judgment dated 02.07.2018 or the compromise between the parties, it is to be kept in mind that whenever the Probate Case is filed under Section 217 of the Indian Succession Act, 1925 before the Probate Court on the basis of the Executor of the Will and the Probate Case is contested under Section 295 of the Act, it is required to be named as a Title Suit as per the Rule 458 of the Civil Court Rules of the High Court of Judicature at Patna, but the fact remains the court which is deciding the probate case with a new name of title suit has no power, jurisdiction and authority to decide the title suit upon the property in question nor has power to decide the ownership of the property which is referred by the executor of the Will of the property.

14. For better appreciation of the case, Section 217 of the Indian Succession Act, 1925 is reproduced hereinafter:



“217. Application of Part.— Save as otherwise provided by this Act or by any other law for the time being in force, all grants of probate and letters of administration with the Will annexed and the administration of the assets of the deceased in cases of intestate succession shall be made or carried out, as the case may be, in accordance with the provisions of this Part.”

15. Rule 458 of the Civil Court Rules of the High Court of Judicature at Patna is reproduced hereinafter:

“458. An application for Probate or for Letters of Administration should, for the purposes of the returns, be treated as a Miscellaneous (Judicial) case until the date upon which it is contested and as a suit from that date. In order to explain the discrepancies which will result in the total number of Miscellaneous (Judicial) cases for disposal, disposed of, and pending, it should be stated on the face of each return of Miscellaneous (Judicial) cases how many applications for Probate and for Letters of Administration were transferred, during the period to which the returns relate, to the head of suits, and treated as suits from the dates upon which the applications were contested. [H.C. memo no. 10245-59, dated 8th October, 1964; Re-applications under section 75 (2) of the Employees State Insurance Act, 1948.]

Note.—Applications for the Revocation of Probate and Letters of Administration should be treated in the same manner as applications for Probate or Letters of Administration.”

16. On merit, I find that it is well settled principle of law that the decree passed by a Court without jurisdiction or by a Court, which lacks inherent jurisdiction, is a *coram non-judice*. Such decree passed by a Court, who has no jurisdiction, is a nullity and non est and its invalidity can be set up, where ever it is sought to be enforced or is acted upon. Learned



Probate Court while answering the issue nos. 1 and 2, has recorded its findings in paragraphs no. 12, 13 and 14 and based on the evidence of witnesses finally analyzed to conclude in paragraphs no. 19, 20 and 21 of the judgment under appeal as under:

“ **19.** The execution of the Will dated 02-12-2006 is not denied, but from the evidence of the parties, it is clearly proved that there is no legal & proper attestation of Will executed by Rupan Mahto and serious surrounding suspicious circumstance has not been removed by petitioner. The learned counsel for petitioner has filed citation 2014 Civ.C.R. 265 (Guj.) in support of submission, in which the Hon'ble Apex Court has given list of probable suspicious circumstances in para 11 and as per para 15, it is well settled that " when a Will is surrounded by suspicious circumstances. the person propounding the Will has a very heavy burden to discharge the onus of proof and onus of removing suspicious circumstances surrounding the execution of the Will."

20. The following surrounding suspicious circumstances are found in this case, which have not been removed by the petitioner:

1. There is no evidence on record to show that Rupan Mahto has taken consent of all his near relatives at the time of execution of Will;

2. None of the sons of Rupan Mahto nor near relatives came to say about consent taken by Rupan Mahto for executing Will dated 02-12-2006 in favor of Puspa Devi;

3. The condition of testator's mind may be very feeble & debilitated at the relevant time;

4. There is no cogent evidence to show that petitioner is only person out of five sons & three daughters of Rupan Mahto, who rendered service to Rupan Mahto:

5. In spite of five sons of Rupan Mahto, the reason has not been explained as to why petitioner being daughter in law performed last ceremony of Rupan Mahto;

6. The attestation of Will in question has not been proved by one of the attesting witness because one of the attesting witness Baleshwar Mahto, brother of Rupan Mahto has been shown as dead in Petition, but to the contrary petitioner's witness Siddhu Mahto, brother of another attesting witness has admitted that Baleshwar Mahto is alive;

7. The petitioner has not explained reason as



to why one of the attesting witness Baleshwar Mahto was not produced to prove the attestation of Will;

8. The propounder took prominent part in the execution of the Will;

21. On the basis of material evidence on record, I find that the petitioner has failed to prove the duly execution, attestation & genuineness of "Will" dated 02-12-2006 executed by Rupan Mahto in favor of Pushpa Devi. Accordingly, issues No. 1 & 2 are decided against the petitioner / plaintiff. It has also been found from material evidence on record as discussed above that executor has died and the Will in question is fully surrounded with suspicious circumstances, resulting in the Will dated 02-12-2006 is not found to be probated. Accordingly, I have come to the conclusion that the petitioner is not entitled to get the relief as claimed

17. Answering the question of law raised by the learned senior counsel that whether Probate Court had jurisdiction only to issue probate and has no jurisdiction to decide the title based on the will.

18. The probate of will is required to be granted by the competent Probate Court upon essentially if the following conditions according to Section 276 of the Indian Succession Act, 1925 are fulfilled.

(a) to see that Will executed by the testator, was actually executed by him/her, in a sound State of mind, without coercion or any undue influence,

(b) Whether the Will was duly attested,

(c) the genuineness of the Will and

(d) due execution of the Will.

This is the scope of the decision of a Probate Court and nothing beyond that;

(vii) The Probate Court:

(a) is not competent to determine the question of title to the suit properties,

(b) the Probate Court has no power, jurisdiction and authority to go into the question whether suit properties which are bequeathed by the Will, are ancestral properties or self-acquired properties of the testator.



(c) The Probate Court can not decide any question of a title or existence of the property itself.

19. The execution of a Will assumes great legal significance, as it represents the final expression of a person's intention regarding the disposition of their property after death. A Will is a legally recognized instrument of testamentary succession, intended to come into operation only upon the demise of the testator or testatrix, and thus it speaks from the date of death. Because the maker of the Will is no longer alive when the document is brought before a court for examination, they cannot clarify the circumstances in which it was executed. In view of this, the law mandates strict compliance with statutory requirements for the due execution and proof of a Will, so as to guard against the risk of manipulation, fraud, or undue influence. In this regard the Apex Court in case of ***Meena Pradhan & Ors. vs. Kamla Pradhan & Anr.*** reported in **2023 INSC 847** in para nos. 9,10 and 11 has observed as under:

“9. A Will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the testator. Since the testator/testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the Will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation.



10. 10. Relying on *H. Venkatachala Iyengar v. B.N. Thimmajamma*, 1959 Supp (1) SCR 426 (3-Judge Bench), *Bhagwan Kaur v. Kartar Kaur*, (1994) 5 SCC 135 (3-Judge Bench), *Janki Narayan Bhoir v. Narayan Namdeo Kadam*, (2003) 2 SCC 91 (2-Judge Bench) *Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh*, (2009) 4 SCC 780 (3-Judge Bench) and *Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277 (3-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the Will:

(i) The court has to consider two aspects; firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;

(ii) It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

(iii) A Will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testator; however, the presence of all

witnesses at the same time is not required;

(iv) For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

(v) The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

(vi) If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;

(vii) Where one attesting witness examined to prove



the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence

(viii) Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be

accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.

(ix) The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;

(x) One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

(xi) Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind'. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc.

11. In short, apart from statutory compliance, broadly it has to be proved that (a) the testator signed the Will out of his own free Will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not executed under any suspicious circumstances."

20. The Apex Court has restrained the Courts while



dealing with the probate of a will to not enter into to decide the question of title. It has been held by the Apex Court in the case of **Chiranjilal Shrilala Goenka vs. Jasjit Singh & Ors.** reported in **(1993) 2 SCC 507** in paragraph no. 15 as follows:

“15. In Ishwardeo Narain Singh v. Smt Kamta Devi this Court held that the court of probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the probate court. Therefore the only issue in a probate proceedings relates to the genuineness and due execution of the will and the court itself is under duty to determine it and preserve the original will in its custody. The Succession Act is a self-contained code insofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate court. This is clearly manifested in the fascicule of the provisions of the Act. The probate proceedings shall be conducted by the probate court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the will annexed establishes conclusively as to the appointment of the executor and the valid execution of the will. Thus it does no more than establish the factum of the will and the legal character of the executor. Probate court does not decide any question of title or of the existence of the property itself.

(emphasis supplied)

21. The above principle of law has been reiterated by the Hon'ble the Supreme Court in the case of **Kanwarjit Singh Dhillon Vs. Hardyal Singh Dhillon**, reported in **(2007) 11 SCC 357**, in paragraphs nos. 11 and 12 as under:

"11. As noted hereinafter, the suit for declaration of title and injunction has been filed by the appellant inter alia on the allegations that the suit properties are joint family properties of HUF of which the appellant and his two brothers Hardyal Singh Dhillon and Harbans Singh Dhillon, mother Surjit Kaur and unmarried daughter Amarjit Kaur



are members. It has also been claimed by the appellant in the suit that by utilising the income from the ancestral agricultural land, various properties including the suit properties were acquired. Such being the allegations made in the plaint which can only be decided on trial after parties are permitted to adduce evidence in respect of their respective claims, it is difficult to hold that only because probate of the will of late S. Kirpal Singh has been granted, the suit for title and injunction must be held to be not maintainable in law. It is well-settled law that the functions of a Probate Court are to see that the will executed by the testator was actually executed by him in a sound disposing state of mind without coercion or undue influence and the same was duly attested. It was, therefore, not competent for the Probate Court to determine whether late S. Kirpal Singh had or had not the authority to dispose of the suit properties which he purported to have bequeathed by his will. The Probate Court is also not competent to determine the question of title to the suit properties nor will it go into the question whether the suit properties bequeathed by the will were joint ancestral properties or acquired properties of the testator." (emphasis supplied)

12. In *Chiranjilal Shrilal Goenka v. Jasjit Singh* [(1993) 2 SCC 507] this Court while upholding the above views and following the earlier decisions of this Court as well as of other High Courts in India observed in para 15 at SCC p. 515 which runs as under:

"15. In *Ishwardeo Narain Singh v. Kamta Devi* [(1953) 1 SCC 295 : AIR 1954 SC 280] this Court held that the court of probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court. Therefore, the only issue in a probate proceedings relates to the genuineness and due execution of the will and the court itself is under duty to determine it and preserve the original will in its custody. The Succession Act is a self-contained code insofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the Probate Court. This is clearly manifested in the fascicule of the provisions



of the Act. The probate proceedings shall be conducted by the Probate Court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the will annexed establishes conclusively as to the appointment of the executor and the valid execution of the will. Thus it does no more than establish the factum of the will and the legal character of the executor. Probate Court does not decide any question of title or of the existence of the property itself.”

(emphasis supplied)

That being the position and in view of the nature of allegations made in the plaint, we do not find any reason as to how the High Court as well as the civil court could come to a conclusion that after the probate of the will executed by late S. Kirpal Singh was granted, the suit for declaration for title and injunction on the above allegation could not be said to be maintainable in law. The High Court also while holding that the suit was not maintainable, in view of the probate granted of the will of late S. Kirpal Singh had relied on a decision of this Court, as noted hereinafter, in Rukmani Devi [(1985) 1 SCC 144] . We are not in a position to agree with the High Court that this decision could at all be applicable in the facts and circumstances of the present case. A plain reading of this decision would not show that after the grant of probate by a competent court, the suit for title and permanent injunction cannot be said to be maintainable in law. What this Court held in that decision is that once a probate is granted by a competent court, it would become conclusive of the validity of the will itself, but, that cannot be decisive whether the Probate Court would also decide the title of the testator in the suit properties which, in our view, can only be decided by the civil court on evidence. It is true that the probate of the will granted by the competent Probate Court would be admitted into evidence that may be taken into consideration by the civil court while deciding the suit for title but grant of probate cannot be decisive for declaration of title and injunction whether at all the testator had any title to the suit properties or not.”

22. From the perusal of the judgment of the learned Probate Court, it appears that learned Probate Court has gone into the question of determining the nature of property was



ancestral or purchased property and documentary evidence adduced in that regard and then concluded to determine the source of title and, thereafter, passed order that the petitioner failed to prove the duly execution and genuineness of the will dated 02.12.2006 to have been executed by Rupan Matho in favour of Pushpa Devi. The Probate Court cannot decide any question of title or of the existence of property. In light of the law laid down by the Apex Court in the case of **Krishna Kumar Birla (supra)** and **Kanwarjit Singh Dhillon (supra)**, the impugned judgment/order dated 02.07.2018 passed in T. (Prob.)S. No. 16 of 2009 is without jurisdiction being nullity is hereby quashed and set aside.

23. As I have already quashed and set aside the impugned judgment dated 02.07.2018, I allow the I.A. No. 2 of 2025, compromise petition filed under Order 23 Rule 3 Read with Section 151 of the Code of the Civil Procedure, 1908 in view of the fact that the parties have settled the matter outside the Court bringing the fact that they want to buy peace of mind and not to fight case in Court. The said I.A. is duly accompanied by the individual affidavit filed by the appellant Pushpa Devi and the respondent Ashok Mahto. A specific statement has been made in paragraph no. 8 of the supplementary affidavit that “in



the interest of justice, compromise petition being I.A. No. 2 of 2025 may be allowed and First Appeal No. 110 of 2018 be disposed of in terms of the compromise petition”.

24. I find that the terms of settlement/compromise are lawful and there is no legal impediments or any condition imposed in accepting the same by this Court.

25. As the parties have already entered into compromise, the appellant becomes entitled to the schedule property as mentioned in the compromise petition. The matter is remitted back to the learned Probate Court, Nalanda to give effect to the compromise petition entered into between the parties in accordance with law.

26. Accordingly, the appeal stands disposed of, so also pending application(s), if any.

27. There shall be no order as to cost.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	29.01.2026
Transmission Date	N/A

