IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 435 of 2018

Raghunandan Pandey, aged about 62 years son of Mathura Pandey, resident of village Bargadda, P.O. Bahimar, P.S. Katkamsandi, District Hazaribagh (Jharkhand).

..... … Appellant

Versus

1. Narayan Pandey, son of Late Sukhdeo-Pandey

(2) Ram Kumar Pandey, son of Late Ayodhya Pandey,

both residents of village Bargadda, P.O. Bahimar, P.S. Katkamsandi, District Hazaribagh (Jharkhand).

3(1) Most. Dropati Devi, W/o Late Dwarika Pandey,

(4) Sudhir Pandey, son of Dwarika Pandey

(5) Umesh Kumar Pandey son of Dwarika Pandey

(6) Ramesh Kumar Pandey son of Dwarika Pandey,

all residents of village Bargadda, P.O. Bahimar, P.S. Katkamsandi, District Hazaribagh (Jharkhand).

..... … Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant : Mr. K.K. Ambastha, Advocate.
: Md. Abdul Wahab, Advocate.

10/ 05.10.2026 This appeal has been preferred under Section 299 of the Indian Succession Act, 1925 being aggrieved and dissatisfied with the judgment dated 30.05.2018, passed by the learned District Judge-III, Hazaribagh, dismissing the Probate Case no. 02 of 2006.

2. Mr. K.K. Ambastha, learned counsel appearing for the appellant submits that Probate Case No. 02 of 2006 was instituted by the appellant namely Raghunandan Pandey for grant of probate of the

Will dated 09.02.2004 by testatrix Mossomat Aato Devi @ Hemanti Devi, wife of Late Dashrath Pandey, resident of Village Bahimar, Police Station Katkamsandi, District Hazaribag. He next submits that testatrix Mossomat Aato Devi @ Hemanti Devi, wife of Late Dashrath Pandey, resident of village Bahimar, Police Station Katkamsandi, District Hazaribag died issueless on 30.09.2005 at Sadar Hospital, Hazaribag, leaving behind the properties mentioned in the application and she was the paternal aunt-in-law of the appellant. He further submits that she executed the last Will and testament dated 09.02.2004 in favour of appellant. He then submits that the testatrix has not executed any Will, letter of administration prior to execution of Will dated 09.02.2004 and the property of Late Mostt. Aato Devi @ Hemanti Devi mentioned in the Will has been appended in Schedule-A of the petition, which was owned and possessed by the above deceased Mostt. Aato Devi @ Hemanti Devi. He then submits that the property which is mentioned in Schedule-A of the petition has come to the hands of the appellant-Raghu Nandan Padey, as the said deed was executed in favour of the appellant.

3. Learned counsel appearing for the appellant submits that although the O.P. No. 1 has appeared in the said probate case, however, later on he has failed to appear and in view of that the case was proceeded *ex-parte* against him by order dated 19.04.2018. He next submits that O.P. No. 2 namely, Ram Kumar Pandey filed separate objection on 20.02.2007, who supported the case of the appellant.

4. Mr. Ambastha, learned counsel submits that the learned court has wrongly held that no witnesses on the Will have appeared before the learned court and proved the said Will. He next submits that P.W.-5 Pradeep Kumar Pandey, who was the attesting witness and in his

examination-in-chief he has stated about the genuineness of his signature of testatrix, however, in his cross-examination he has denied the same. He submits that only on that ground, the learned court has been pleased to reject the probate case, which is not in accordance with law, as such, the impugned judgment may kindly be set aside and this appeal may kindly be allowed.

5. In the aforesaid background, it transpires that the learned court has framed five issues to decide the said probate case. Issue No. 4 was with regard to the Will dated 09.02.2004, as to whether the said Will was executed voluntarily without coercion, fraud and undue influence or not. The learned court has taken Issue Nos. 3 and 4 simultaneously and has discussed the evidence of witnesses in para-15 onwards of the judgment and has found that there is no witness on the execution of the Will and there is no signature and the learned court has further considered Section 63 of the Indian Succession Act and found that P.W.-5 Pradeep Kumar Pandey was said to be the witness of the signature on the Will, however, in his cross-examination he has clearly stated that he has not signed on the said Will as an attesting witness. P.W.-5 in his cross-examination in para-10 has stated that he has not signed the Will as attesting witness and only that witness was examined as witness of the said Will and in view of that learned court has held that the appellant herein has not examined the attesting witness. The learned court has also found that the contention was made that the said Will was registered one, however, the said Will was not registered one, rather it was notarized.

6. The Trial Court Records have been received in this case and Exhibit-1 is the Will and on perusal of the said Will, it transpires that P.W.-5 Pradeep Kumar Pandey has not signed on the said Will and not

written anything on the Will below of thumb impression of the testator Mostt. Aato Devi @ Hemanti Devi.

7. Reference may be made to the case of ***Parvathi Nairthi Versus Laxmi Nairthy*****,** reported in **2026 Supreme (Online) (SC) 1741,** wherein the Hon'ble Supreme Court has issued the following guidelines, which reads as under:-

> ***"****29. With regard to the principles pertaining to the validity and execution of a Will, reliance is placed on the judgments passed by 3 Judges Bench and 2 Judges Bench of this Court in H. Venkatachala Iyengar v. B.N. Thimmajamma And Others)[2] 1958 SCC OnLine SC 31., Bhagwan Kaur v. Kartar Kaur And Others)[3] (1994) 5 SCC 135., Janki Narayan Bhoir v. Narayan Namdeo Kadam)[4] (2003) 2 SCC 91., Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh And Others)[5] (2009) 4 SCC 780., and Shivakumar And Others v. Sharanabasappa And Others)[6] (2021) 11 SCC 277., from which the following principles required for proving the validity and execution of a Will may be deduced:*
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> *"10.1. 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;*
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> *10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.*
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> *10.3. A will is required to fulfil all the formalities required under Section 63 Succession Act, that is to say: of the*
>
> *(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;

10.4. 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;

10.5. 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;

10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;

10.7. 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;

10.8. 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.

10.9. 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;

10.10. 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.

10.11. Suspicious circumstances must be "real, germane and valid" and not merely "the fantasy of the doubting mind [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277] ". 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."

8. In view of the above judgment and also in view of the

above facts, reasons and analysis, it transpires that there is no illegality in the impugned Judgement, passed by the learned District Judge-III, Hazaribagh. As such, this appeal fails and, is hereby, dismissed.

9. Let the Trial Court Records be sent back to the learned concerned court forthwith.

(Sanjay Kumar Dwivedi, J.)

Dated:-05.10.2026

Amitesh/- **[A.F.R.]**