IN THE HIGH COURT OF JHARKHAND AT RANCHI
M.A. No. 599 of 2018

Sita Ram Soni, aged about 61 years, S/o Late Janki Sah, R/o Kumartoli, P.O. Hazaribagh, P.S. Sadar & District Hazaribagh.

..... … Appellant

Versus

1. Sanjay Soni
2. Santosh Soni

Both S/o Late Janki Sah, R/o Village Udlu, P.O., P.S. Mandu, & District - Hazaribagh.

3. Sudama Prasad Soni, S/o Janki Sah, R/o Village Udlu, P.O., P.S. Mandu & District - Hazaribagh.
4. Kailash Devi, W/o Late Janki Sah, R/o Village Udlu, P.O. Partanga, P.S. Mandu & District - Hazaribagh.
5. Tinki Devi W/o Janardan Sao, R/o Village Sukrigarha, P.O., P.S. Lari & District - Ramgarh.
6. Bina Devi W/o Manoj Kumar Soni, R/o Village Barkagaon, P.O., P.S. Barkagaon & District - Hazaribagh.
7. Asha Devi W/o Niwas Prasad, R/o Village Sukrigarha, P.O., P.S. Lari & District - Ramgarh.
8. Sumitra Devi W/o Murlicharan Sao, R/o Village Charhi, P.O., P.S. Charhi & District - Hazaribagh.
9. Geeta Devi W/o Rohit Sao, R/o Village Sukrigarha, P.O., P.S. Lari & District - Hazaribagh.
10. Sarita Devi W/o Sunil Prasad Soni, R/o Village Sukrigarha, P.O., P.S. Lari & District - Ramgarh.
11. Babita Devi W/o Mukesh Kumar Soni, R/o Village Tandwa, P.O., P.S. Tandwa & District – Chatra.

..... … Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant : Mr. Abhishek Kumar, Advocate.
[A.C. to Mr. Chanchal Jain]
For the Resp. Nos. 1 to 4 & 6 to 11: Mr. Yogendra Prasad, Advocate.

06/ 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 07.07.2018, passed by the learned District Judge-III, Hazaribag, in Probate Case No. 02 of 2007, whereby the probate case , filed by the appellant has been dismissed by the learned court on contest.

2. Mr. Abhishek Kumar, learned A.C. to Mr. Chanchal Jain, who is advocate on record for the appellant submits that the appellant herein has instituted Probate Case No. 02 of 2007 for grant of probate of the last Will dated 24.04.1996 in favour of the appellant executed by Late Janki Sah, S/o Late Gyani Sah, resident of Kumhartoli, PS- Sadar, District- Hazaribag, prescribed in Schdule-A of the petition consisting of 09 decimals of land of Plot No. 396 of khata No.49, village- Hazari, PS- Hazaribag, District- Hazaribag within the Hazaribag Municipality, Holding no.398, Ward No.20, in favour of the applicant along with half of the lands situated in the village which was allotted to the share of testator Janki Sao in Partition Suit No.17 of 1964. He further submits that Janki Sao had two wives and Bijli Devi was his first wife and the applicant is the son of Janki Sao from his first wife Bijli Devi. He then submits that the first wife Bijli Devi, predeceased her husband and after the death of his first wife, the said Janki Sao married with another girl Kailasha Devi and out of the wedlock of that marriage, Sudama Prasad Soni, Sanjay Soni and Santosh Soni were born, who are the respondents herein. He also submits that the respondents never looked after their father Janki Sao who always remained with his elder son, the appellant herein. He submits that on the aforesaid background, the probate case

was filed, which has been decided by the learned court by the judgment dated 07.07.2018, wherein the principles of deciding the probate case has wrongly been discussed in the said judgment and in view of that he submits that the said judgment may kindly be set aside.

3. Learned counsel appearing for the appellant submits that the learned court was only to look into the Will and find out the correctness of the same, however, the learned court has entered into the dispute and wrongly dismissed the probate case. He further submits that the learned court has further wrongly appreciated the partition paper exhibited by Late Janki Sao and according to him, the said partition paper was forged and fabricated document and in view of that the learned court has wrongly relied upon the same and the learned court has further erred in dismissing the probate case.

4. Learned counsel appearing for the appellant has relied upon a judgment of Hon'ble Supreme Court in the case of ***Kanwarjit Singh Dhillon Versus Hardyal Singh Dhillon & Ors***. reported in **(2007) 11 SCC 357**, wherein the Hon'ble Supreme Court in para-12 of the said judgment has held as follows:-

> "*12. In Chiranjilal Shrilal Goenka v. Jasjit Singh and Ors., [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 paragraph 15 at page 515 which runs as under :-*
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> *"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 proceeding relates to the genuineness and due execution of the will and the court itself is under duty to determine it and perverse 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 herein earlier, in the case of Rukmani Devi (supra). 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."*

5. Relying on the above judgment, he submits that the case of the appellant is fully covered and in view of that the impugned judgment may kindly be set aside.

6. Mr. Yogendra Prasad, learned counsel appearing for the respondent Nos. 1 to 4 and 6 to 11 has opposed the prayer and submits that the learned trial court has dealt with the entire facts and circumstances including the witnesses examined on behalf of the parties and thereafter passed the said judgment. According to him, there is no perversity in the said judgment. He further submits that the property, which was the subject matter of the Will, the panchayati was held in the

village between the sons and Janki Sao including the appellant on 04.04.1997 and in that panchayat, the document has been admitted by the appellant himself and in his cross-examination, the appellant himself has admitted his signature of deceased Janki Sao and in the said panchayatnama, said Janki Sao has given equal shares to all his sons in all his properties including the properties involved in the alleged Will. He then submits that said Janki Sao died on 17.03.2000, wherein the alleged will was executed on 24.04.1996 and the probate case was filed in the year 2007 and the death certificate of said Janki Sao was obtained on 23.12.2006. He also submits that in view of this fact also the Will was forged one and of the earlier period of panchayatnama. On these grounds, he submits that the learned court has rightly passed the judgment.

7. In view of the above submissions of learned counsel appearing for the parties and after going through the impugned judgment as well as the Trial court records, it is an admitted position that the Will was prior of Panchayatnama, by which, the properties have been partitioned between the appellant and his step brothers in presence of the executor of the Will namely Late Janki Sao. In the said panchayatnama, the property of the Will was also partitioned between the sons of Late Janki Sao. There is no doubt that limitation cannot be the ground of rejecting the probate case, however, in the present case, the death has occurred on 17.03.2000, wherein the death certificate of said Janki Sao was obtained on 23.12.2006 and thereafter the probate case has been filed in the year 2007, which castes doubt upon the genuineness of the said Will. All these aspects have been taken into considered by the learned court while deciding the probate case by the judgment dated 07.07.2018.

8. If such disputes are there, the remedy to the parties to go before the competent court of civil jurisdiction and in the judgment relied by the learned counsel appearing for the appellant in the case of Kanwarjit Singh Dhillon (Supra), it has been held that the valid execution of Will is one of the aspect to decide the probate case. It has also been held therein that the factum of the Will and illegal character of the executor can be the subject matter in the probate case and the title cannot be decided. In view of that finding of the Hon'ble supreme court in the said judgment, that judgment is also not helping the appellant herein, as the dispute is there with regard to property, which has been divided between the sons of the testatrix.

9. Reference may be made to the case of ***Parvathi Nairthi Versus Laxmi Nairthy*****,** reported in **2026 Supreme (Online) (SC) 1741,** where in para-29, the Hon'ble Supreme Court has issued the following guidelines/principles, 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 Others22 1958 SCC OnLine SC 31., Bhagwan Kaur v. Kartar Kaur And Others33 (1994) 5 SCC 135., Janki Narayan Bhoir v. Narayan Namdeo Kadam44 (2003) 2 SCC 91., Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh And Others 55 (2009) 4 SCC 780., and Shivakumar And Others v. Sharanabasappa And Others66 (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;

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.

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."*

10. In view of the above judgment and the principes laid down by the Hon'ble supreme court to decide the probate cases and if there exists any suspicion about 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 and the onus lies upon the appellant and herein the appellant has failed to do so before the learned court as well as before this court.

11. In view of the above facts, reasons and analysis, this court finds that there is no illegality in the impugned judgment, as such, this appeal is dismissed.

12. 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.]**