
(2020) 02 PAT CK 0390
In the Patna High Court
Case No : Test Case No. 8 Of 2016

Goods Of Veena Devi

APPELLANT

Vs

Shipra

RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Evidence Act, 1872 — Section 63, 68

Citation : (2020) 02 PAT CK 0390

Hon'ble Judges : Vikash Jain, J

Bench : Single Bench

Advocate : Rajendra Narayan Singh, Ujjwal Kumar Sinha, Suchitra Singh, Arjun Prasad Singh

Final Decision : Allowed

Judgement

Heard the parties.

2. This application has been filed for grant of Probate of Will executed by Late Veena Devi on 17.06.2014 in favour of the sole applicant, who is the youngest daughter -in-law of the testatrix as also the sole beneficiary under the Will. The applicant herein is also appointed as an executrix under the Will dated 17.06.2014 executed by the Testatrix with respect to her self-acquired residential property admeasuring about 4000 sq. ft. situated at Ward No. 23, Block-F, Type-C, Plot No. F-29, Kankarbagh, District Patna.

3. The testatrix had five sons and three daughters, all of whom have been arrayed as Near Relatives in the application. Out of them, two sons namely, Dr. Kaushal Kishore and Sri Dharampal Kumar are also the attesting witnesses of the Will dated 17.06.2014 executed by the testatrix. The testatrix died on 09.06.2015 at Patna.

4. Pursuant to the orders of this Court dated 06.10.2017, General Citation was published in two local daily newspapers namely The Times of India (in English) and Dainik Jagaran (in Hindi) in their Patna editions both on 22.11.2017. All the

eight Near Relatives mentioned in Para-5 of the main application have appeared in this case by filing their properly executed Vakalatnamas. However, no person appeared to contest the case and this case proceeded in an uncontested manner.

5. In order to establish the case, the applicant chose to examine three witnesses on her behalf, including herself as A.W.-3, Sri Dharampal Kumar and Dr. Kaushal Kishore were examined as A.W.-1 and A.W.-2 respectively.

6. Sri Dharampal Kumar (A.W.-1) during his examination, stated before the Court that the draft of the Will was prepared by him as per the instructions of his mother. The contents of the draft of the Will were read over and explained to his mother by him. His elder brother Dr. Kaushal Kishore also read the contents of the draft of the Will. After being satisfied with the contents of the Will, his mother Veena Devi signed on each page of the Will. Thereafter on her request, he alongwith his elder brother Dr. Kaushal Kishore signed over the Will at its last page as attesting witness. He also identified the original Will dated 17.06.2014 as also his own signature as well as signatures of the testatrix and that of his elder brother Dr. Kaushal Kishore. The Will dated 17.06.2014 was marked as Ext.-1. The signatures of A.W.-1 Dharampal Kumar was marked as Ext.-5 when he was examined on recall on 13.12.2019.

7. Dr. Kaushal Kishore (AW-2) in his examination, stated that his mother Veena Devi executed the Will dated 17.06.2014 in his presence after being satisfied with the contents of the Will. She executed the Will out of her own free will without facing any pressure or coercion from any quarter. He further stated in his reply to Court's question that his mother was physically and mentally fit at the time of execution of the Will. He identified his own signature over the Will as well as the signature of his mother. The signatures of Veena Devi upon each page of the Will were marked as Ext. -2 to 2/4. The signature of AW-2 Dr. Kaushal Kishore was marked as Ext.-3.

8. Smt. Shipra (AW-3), in her examination stated that she is the sole beneficiary as also the sole executrix under the Will dated 17.06.2014 executed by her mother-in-law Veena Devi. She further stated that she is the youngest daughter-in-law of the testatrix. She identified the signatures of the testatrix as well as signatures of attesting witnesses namely Dr. Kaushal Kishore and Dharampal Kumar. During her examination, she further identified the Deed of Transfer of Lease-hold rights dated 15.12.2008 of the suit property. She also stated that the original Will dated 17.06.2014 and Deed dated 15.12.2008 were handed over to her by Veena Devi six months prior to the latter's death. She further stated that the Will dated 17.06.2014 is a genuine one and is the last Will of the testatrix. The Deed dated 15.12.2008 was marked as Ext.-4 and the signature of Veena Devi over the said Deed was marked as Ext.-4/1.

9. Having heard learned counsel for the applicant and on consideration of the materials on record, depositions of the aforesaid three witnesses as also the original Will dated 17.06.2014, this Court is satisfied that the applicant has been

able to prove her case about the genuineness of the Will dated 17.06.2014 executed by Late Veena Devi beyond any reasonable doubt, in conformity with the provisions of Section - 63 of the Act read with Section -68 of Indian Evidence Act and as propounded by the Hon'ble Supreme Court in the case of Niranjana Umeshchandra Joshi vs. Mrudula Jyoti Rao and others, 2006(14) Scale 186. The Will dated 17.06.2014 was properly executed by the testatrix in presence of two witnesses namely Dr. Kaushal Kishore and Dharampal Kumar, who also happen to be the two sons of the testatrix. This Court also holds that the Will dated 17.06.2014 is the last Will of the testatrix, Late Veena Devi, as none has appeared to contest the case even after publication of General Citation in two daily newspapers namely, The Times of India and Dainik Jagaran in their Patna editions.

10. Accordingly, this application is allowed. Let Probate of the Will dated 17.06.2014 executed by Late Veena Devi be issued in favour of the sole applicant of this case with a copy of the Will annexed thereto, which shall have effect throughout the territory of India.