

(2024) 04 PAT CK 0065
In the Patna High Court
Case No : Test Case No. 11 Of 2022

In The Goods Of Late Ashok Kumar,

APPELLANT

Vs

Xxxxxxx

RESPONDENT

Date of Decision : 22-04-2024

Acts Referred:

Indian Succession Act, 1925 — Section 63, 276, 280, 281, 300

Citation : (2024) 04 PAT CK 0065

Hon'ble Judges : Arun Kumar Jha, J

Bench : Single Bench

Advocate : P. N. Shahi, Manish Kumar No. 2, Deep Shekhar, Avinash Chandra, Amit Anand, Jitendra Kishore Verma, Apurva Kumar

Final Decision : Allowed

Judgement

1. Heard learned counsel for the applicant as well as learned counsel for the sole near relative (NR).
2. This application has been filed for grant of Probate of the Will dated 24.07.2021 executed by Late Ashok Kumar, son of Late Lal Narayn Sinha whereunder the petitioner/applicant namely, Sri Partha Sarthy, son of Late Justice Lalit Mohan Sharma is one of the legatees/beneficiaries and he has also been appointed as an Executor of the said Will.
3. It has been submitted on behalf of the applicant that Late Ashok Kumar initially executed a Will on 09.10.1995. However, since the document of Will dated 09.10.1995 became brittle due to poor paper quality, he subsequently executed another Will dated 24.07.2021 voluntarily in good physical health and in sound state of mind, after understanding the contents of the Will, without any undue influence or coercion of anybody, in presence of two attesting witnesses, namely, (i) Devendra Prasad Sharma (AW-2), resident of 2/F-5, Purnendu Nagar, Phulwarisharif, District-Patna and (ii) Ram Vijay Sharma (AW-3), resident of Purnendu Nagar, Near Shiv Mandir, Phulwarisharif, District-Patna. The said

testator, Late Ashok Kumar, was a Hindu governed by the Mitakshara School of Hindu Law and was permanently residing at Anugrah Narain Road, Post Office and Police Station Kadam Kuan, Town and District-Patna, which falls within the territorial jurisdiction of this Court. The testator died on 24.10.2021 while undergoing treatment at Ruban Memorial Hospital, Patliputra Colony in town and District-Patna and the Will dated 24.07.2021 is the last executed Will of the testator, which was duly executed in terms of Section 63 of the Indian Succession Act, 1925. The father of the testator, late Lal Narayan Sinha, former Attorney General of India expired on 10.02.1995 and his mother expired on 19.04.1994. Besides himself, the testator had two own brothers, namely, Late Justice Lalit Mohan Sharma (Former Chief Justice of India) and Sri Birendra Kumar Singh. The eldest brother of the testator, late Justice Lalit Mohan Sharma (Former Chief Justice of India) and only sister late Indu Bala predeceased him. The testator, Ashok Kumar was unmarried and he died leaving behind his brother, namely, Mr. Birendra Kumar Singh son of late Lal Narayan Sinha, who resides in USA. The testator appointed the applicant as executor of his last Will dated 24.07.2021. The testator has bequeathed his properties in favour of his two nephews namely, Sri Partha Sarthy (applicant) and Sri Somendra Singh S/o Sri Birendra Kumar Singh in equal shares on account of his love and affection for them. The value of assets, which are likely to come in the hands of its beneficiaries is approximately Rs. 9,36,29,915/0 (Rupees nine crores thirty six lacs twenty nine thousand nine hundred fifteen), which is mentioned in Schedule-A of the plaint. The amount of liabilities and other deduction are given in Schedule-B of the plaint.

4. The applicant has also named the sole near relative of the testator. Since the sole near relative (NR) of the testator, namely, Sri Birendra Kumar Singh, appeared through Vakalatnama, this Court vide order dated 19.11.2022, dispensed with the process of issuance of special citation upon him and the applicant was directed to take steps for publication of general citation in two local daily newspapers, one in English daily-"The Times of India" and another in Hindi daily- "Dainik Jagran" in their Patna edition. Thereafter, affidavit filed on behalf of the applicant in support of publication of general citation in Dainik Jagran (Hindi) dated 04.01.2023 and Times of India (English) dated 06.01.2023, respectively, was accepted and was kept on record. The aforesaid NR did not choose to file any caveat or objection to grant of probate in favour of the applicant and rather supported it. Moreover, the sole near relative did not cross examine the witnesses produced on behalf of the applicant despite his appearance through his Advocate.

5. In support of his case, altogether three witnesses, including two attesting witness of the Will, have been examined on behalf of the applicant. The applicant, Sri Partha Sarthy, examined himself as AW-1 while other two attesting witnesses of the Will, namely, Devendra Prasad Sharma and Ram Vijay Sharma have been examined as AW-2 and AW-3, respectively. AW-1, Sri Partha Sarthy, has been examined on Commission through Advocate Commissioner on

12.01.2024. In his deposition before the Advocate Commissioner, AW-1 stated that the testator, late Ashok Kumar, had executed the Will dated 09.10.1995 in his favour and in favour of his cousin Sri Somendra Singh and they are the only beneficiaries of the Will. He further stated that since the paper upon which the earlier Will dated 09.10.1995 was written and executed by the testator became very fragile with passage of time, so the testator chose to re-write and execute another Will dated 24.07.2021. The witness categorically stated that both the Wills are in own hand writing of the testator Late Ashok Kumar and in the second Will dated 24.07.2021, the testator had noted the reasons for executing the second Will. This witness identified the Wills dated 09.10.1995 and 24.07.2021, which have been marked as Exhibit-1 and Exhibit 1/A, respectively. The witness further identified the signature of the testator, late Ashok Kumar, on both the Wills dated 09.10.1995 and 24.07.2021, which have been marked as Exhibit-2 and Exhibit-2/A, respectively. The witness further stated that first Will dated 09.10.1995 has been attested by two witnesses, namely, Sri Rajendra Sharma and Sri Nand Kishore Rai and they have made their respective endorsements and signatures with date over the Will dated 09.10.1995, which have been marked as Exhibit-3 and 3/A, respectively and in the subsequent re-written Will dated 24.07.2021, Sri Devendra Prasad Sharma and Sri Ram Vijay Sharma have attested the Will along with endorsement and date, which have been marked as Exhibit-4 and Exhibit 4/A, respectively. Upon Commissioner's question, the witness further stated that the testator had executed both the Wills voluntarily, out of his own free will without facing any external pressure or coercion and at the time execution of the Wills on both the dates, the testator was physically and mentally fit and was in a sound state of mind. He further categorically stated that his uncle, the testator, had handed over the two Wills to him for safe custody and after the death of his uncle, he took necessary steps as required under the law with the consent of only other beneficiary Sri Somendra Singh. The witness further categorically stated that both the Wills were executed by the Testator with same and similar contents and due to fragility of paper of first Will, he decided to execute subsequent second Will dated 24.07.2021 and he has mentioned this reason in the second Will as well.

6. AW-2, namely, Devendra Prasad Sharma, who is one of the attesting witnesses of the Will, has been examined on 15.02.2024. This witness, in his deposition, stated that the testator was known to him since 1973 as he was appointed in Patna High Court as driver to the elder brother of testator, late Ashok Kumar Sharma. This witness categorically stated that the testator told him about the Will dated 24.07.2021. The witness identified the Will dated 24.07.2021 (Exhibit-1/A) and also proved his signature over the Will (Exhibit-4). He further identified the signature of his brother, Ram Vijay Sharma, who is also an attesting witness over the Will dated 24.07.2021 (Exhibit 4/A). Upon Court questions, this witness categorically stated that at the time of execution of the Will, the testator was physically fit and was of sound mind and the Will was not executed under any force, coercion or duress. The witness has not been cross-

examined though opportunity was given to the other side.

7. AW-3, namely, Ram Vijay Sharma, who is also an attesting witness of the Will dated 24.07.2021, has been examined on 15.02.2024. This witness, in his deposition, stated that the testator was known to him since 1973 as his elder brother, Devendra Prasad Sharma, was appointed in Patna High Court as driver to the elder brother of testator, late Ashok Kumar Sharma. This witness categorically stated that on 24.07.2021, he along with his brother was called to witness the Will dated 24.07.2021. The witness identified the Will dated 24.07.2021 (Exhibit-1/A) and also proved his signature over the Will (Exhibit-4/A). He further identified the signature of his brother, Devendra Prasad Sharma, who is also an attesting witness over the Will dated 24.07.2021 (Exhibit 4). He further stated that the contents of examination-in-chief filed by him on affidavit are true and correct. Upon Court questions, this witness categorically stated that at the time of execution of the Will, the testator was physically fit and was of sound mind and the Will was not executed under any force, coercion or duress. The witness has not been cross-examined despite opportunity given to the other side.

8. Learned counsel for the applicant further submits that the only near relative (NR) of the testator, Sri Birendra Kumar Singh has entered appearance through Advocate and has not opposed the grant of probate in favour of the applicant. The sole NR supported the grant of probate. In the present case, the Will has been proved by the attesting witnesses of the Will according to provisions of Indian Evidence Act. Further, the probate petition fulfills the requirements of sections 276, 280 and 281 r/w 300 of the Indian Succession Act, 1925 and the procedural requirements as laid down in Chapter XI of the Patna High Court Rules including payment of requisite probate duty have also been complied. There is no scope of any suspicion and no objection has been forthcoming to the grant of probate of the Will dated 24.07.2021 in favour of its beneficiaries. Thus, the learned counsel submits that probate with respect to the last Will dated 24.07.2021 (Ext. 1/A) executed by the deceased Testator may be granted.

9. From the aforesaid facts and circumstances, it transpires that the applicant himself as AW-1 as well as the attesting witnesses of the Will have proved the Will before this Court. All witnesses in categorical terms have stated that at the time of execution of Will, Late Ashok Kumar was in a good physical and mental health and he voluntarily completed all the formalities of the Will and his signature has been identified by the witnesses.

10. On analysis of the evidence(s) which have been deposed by the witnesses, it is very much clear that Late Ashok Kumar, in good state of conscious mind, without any coercion and pressure, fully understanding the contents of the Will, had put the signature over the Will and on his request the attesting witnesses put their respective signatures in the body of the Will which has been proved by the witnesses as discussed herein-above. There appears no suspicious circumstances regarding due execution of the Will in question.

Hence, this Court is of considered view that the testator, Late Ashok Kumar, executed the Will in favour of its legatees, namely, Sri Partha Sarthy (applicant) and Sri Somendra Singh in equal shares, in a proper state of mind with proper understanding of the contents of the Will.

11. Accordingly, this application is allowed. Let the Probate of the Will dated 24.07.2021 be issued in favour of applicant who has been appointed executor by the said Will with a copy of the Will annexed thereof, which shall have effect throughout the territory of India.