

(1998) 07 PAT CK 0076

In the Patna High Court

Case No : Testamentary Case No. 2 of 1997

In the Goods of Late Binapani Nag

APPELLANT

Vs

Asit Kumar Nag

RESPONDENT

Date of Decision : 10-07-1998

Acts Referred:

Succession Act, 1925 — Section 317, 63

Citation : (1998) 3 BLJR 1621 : (1998) 2 PLJR 721

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Jha, J.—This is an application for grant of Letters of Administration of the will dated 22.2.74 with respect to the estate of Late Binapani Nag, widow of Late P.K. Nag of Jamal Road, Patna town. Smt. Binpani Nag, as indicated above, executed will with respect to immovable property as fully described in the schedule appended to the will, bequeathing the same to the petitioner Asit Kumar Nag, her grandson (son of her eldest son Dr S.K. Nag). The will was presented for registration before the registering authority at Patna on the same day and was registered in due course. On 24.6.92 she died.

2. This application seeking Letters of Administration was filed through Dr. Suhrit Kumar Nag holding power of attorney on behalf of Asit Kumar Nag on 26.3.97. The application was duly advertised in the newspapers. Notices were also sent to the near relatives cited in the application. None has appeared to oppose the grant.

3. The petitioner has examined Dr. Swet Kumar Nag, Sri Sudhanshu Chandra Palit and Sri Samir Kumar Sinha in support of his case. Out of them Sri Sudhanshu Chandra Palit was examined on commission at Calcutta on account of his advanced age and illness.

4. Section 63 of the Indian Succession Act, 1925, which lays down the manner of

execution of unprivileged will, provides that every testator, not being a soldier and airman or a mariner, shall execute his will by signing or affixing his mark to the will or getting the same signed by some other person in his presence and by his direction, which shall be attested by two or more witnesses, each of whom should have seen the testator signing or affixing his. mark to the will or the other person signing the will in his presence and by the direction of the testator, and each of such witnesses should also sign the will in presence of the testator.

5. There are three attesting witnesses in this case, namely, Sri Sudhanshu Chandra Palit, Sri Nihar Ranjan Chakravarty and Sri A.K. Sinha. The latter two are said to have died. Sri Sudhanshu Chandra Palit is the only surviving witness, who, as stated above, has been examined on commission. He has stated in no uncertain terms that at the time of execution of the will the testatrix, viz., Smt. Binapani Nag was in a sound state of mind and executed the will on her own. She put her signature on the will and the cuttings therein in presence of the attesting witnesses, and the attesting witnesses, in their turn, put their respective signatures in presence of and at the instance of the testatrix. He also proved the custody of the will.

6. It would not be out of place to mention here that at the time of registration of the document, the testatrix was identified by no less a person than her daughter Smt. Shefalika Dutta, wife of Justice K.K. Dutta, a retired Judge of this Court. The fact that the testatrix died after about 18 years of the execution of the will and no dispute of any kind was raised during her lifetime or has been raised after her death or even in the present proceeding goes a long way to show that the execution of the will was a bon afide act. From perusal of the will it appears that while making disposition of her immovable property, the testatrix reserved disposal of her moveables to be done later in her life time.

7. The family members of the testatrix appear to be quite well placed in life. The petitioner himself is a Member of Indian Foreign Service presently posted in Switzerland (that is the reason why the present application was got filed through Dr. Suhrit Kumar Nag, holding power of attorney on his behalf)

8. In the above premises, I find that due execution of the will is proved. The custody of the will also is proved. That the testatrix was in sound state of mind at the time of execution of will and possessed necessary testamentary capacity also is proved. The requirements of law, thus, are satisfied. There are no suspicious circumstances attending execution of the will which could disentitle the petitioner to the grant. The petitioner, therefore, in my opinion, is entitled to the grant, as prayed for.

9. This application is, accordingly, allowed. Let Letters of Administration of the will of Smt. Binapani Nag be granted to the petitioner, subject to the provisions of Section 317 of the Indian Succession Act regarding submission of inventory and account in this Court within the prescribed period.