

(2024) 02 PAT CK 0004
In the Patna High Court
Case No : Test Case No. 3 Of 2018

In The Goods Of Late Chedilal Dwarikadas Tibrewal
Vs

APPELLANT

Sushila Devi

RESPONDENT

Date of Decision : 01-02-2024

Acts Referred:

Citation : (2024) 02 PAT CK 0004

Hon'ble Judges : Arun Kumar Jha, J

Bench : Single Bench

Advocate : Nazir Alam

Final Decision : Allowed

Judgement

1. Heard learned counsel for the applicant.

2. This application has been filed for grant of probate of the registered Will dated 26.09.2014 executed by late Chedilal Dwarikadas Tibrewal. The registered will has been executed in favour of the applicant namely Sushila Devi, w/o Sushil Kumar Tibrewal.

3. It has been submitted on behalf of the applicant that Late Chedilal Dwarikadas Tibrewal executed the registered Will dated 26.09.2014 voluntarily in good physical health and 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) Sir Anshu Didwania, Son of Arun Kumar Didwania, R/o- B2-601, Kumar Shanti Niketan, P.O.-Hinjewadi, P.S. Hinjewadi, Pune, presently residing at B-503, West One Apartment, Pakher Vasti, Wakad, Behind Madhuban Hotel, P.O and P.S.-Hinjewadi, Hinjewadi Wakad Road, Pune City, Pune-411057 and (ii) Smt. Nischal Agawral, W/o Nitin Jabdia, Resident of A-1101, Prishine Prolfe, Wakad, P.O. Hinjewadi, P.S. Hinjewadi, Pune-411057. The said testator late Chedilal Dwarikadas Tibrewal was a Hindu governed by the Mitakshara School of Hindu Law and was permanently residing at S.K. Nagar, P.O.-Kidwaipuri, P.S.-Budha Colony, Town & District-Patna and he was lastly resided at

Flat No. 1603, Tower No. 08, Blue Ridge, Phase 1, MIDC, Hinjewadi, P.S.-Hinjewadi, Pune-411057. The testator died at Pune on 08.10.2014 at about 01:00 pm. and the Will dated 26.09.2014 is the last Will of the testator. Late Chedilal Dwarikadas Tibrewal died leaving behind three sons, namely, Pradeep Kumar Tibrewal, Sanjay Kumar Tibrewal and Sushil Kumar Tibrewal and two daughters, namely, Uma Choudhary and Meera Khetan, respectively. The property covered under the Will is a self acquired property of the testator and on that authority he bequeathed the property of his own through registered Will in favour of his daughter-in-law, Sushila Devi. The applicant has been named as sole beneficiary/legatee of the registered will dated 26.09.2014 executed by the testator. The amount of asset, which are likely to come in the hands of the applicant is approximately Rs. 7003197/-, which is mentioned in Schedule-A of the plaint.

4. The applicant has also named all the near relatives of the testator and this Cour vide order dated 10.08.2018 directed to issue special citation to five near relatives by both process, i.e., under ordinary as well as speed post and also directed the applicant to take steps for publication of general citation in two local daily newspaper, namely, Dainik Bhaskar (Hindi) and Times of India (English). Thereafter, affidavit filed on behalf of the applicant in support of publication of general citation in Times of India (English) and Dainik Bhaskar (Hindi), both dated 07.09.2018, was accepted and was kept on record and special citation upon all the near relatives was declared to be validly served. The notices have also been served upon all of them, but only three of them, namely, NR-2 namely Sanjay Kumar Tibrewal, NR-4 Uma Choudhary and NR-5 Meera Khetan appeared in the test case. The aforesaid NRs did not choose to file any caveat or objection to grant of letter of administration in favour the applicant. Moreover, none of the appeared near relatives cross examined the witnesses produced on behalf of the applicant despite their appearance through their respective advocate.

5. In support of the case, two attesting witnesses of the Will have been examined on behalf of the applicant, namely, Smt. Nischal Agarwal (AW-1) and Mr. Anshu Didwania (AW-2) and applicant himself examined as AW-3. The AW-1, Nischal Agarwal has been examined on 14.09.2023. She has categorically stated in his evidence that she was known to testator and the testator has executed and registered the Will on 26.09.2014 at Pune. This witness also identified the original registered will dated 26.09.2014 executed by the testator, namely Late Chedilal Dwarikadas Tibrewal and his signature at Page No.4 of the Will, which have been marked as Exhibit-1 and Exhibit-2 respectively. This witness also identified her signature and signature of another attesting witness, namely, Anshu Didwania at Page No. 4 of the Will, which have been marked as Exhibit-3 and 3/1 respectively. This witness has also categorically stated that the testator after understanding the contents of the Will has put his signature in her presence as well as another witness Anshu Didwania on the Will and thereafter at the request of the testator she along with the another attesting witness Anshu Didwania put their signatures as attesting witnesses over the Will. This witness

has also stated that the testator was having sound physical and mental condition at the time of execution of the Will. Upon Court's question, the witness stated that the medical certificate of the testator was obtained keeping in view the old age of the Testator, as he was aged about 85 years at the time of execution of the Will. This witness also stated that at the time of execution of the Will, he was residing at Pune and the testator died on 08.10.2014.

6. AW-2 namely Anshu Didwania has been examined on 12.10.2023. He also stated that the testator was known to him and testator has executed and registered his will on 26.09.2014 and he has also proved the original will dated 26.09.2014 (Exhibit-1). This witness has stated that the testator has executed the will in his presence and in presence of Nischal Agarwal (AW-1). He identified the signatures of the testator at Page-4 of the Will (Exhibit-2). This witness has also stated that the testator has executed and signed in presence of both the attesting witnesses. Thereafter at the request of testator, this witness has signed in presence of him and in presence of another attesting witness. He also proved his signature (Exhibit-3/1) as well as signature of another attesting witness of the Will (Exhibit-3). This witness has also stated that the testator had gone to registry officer for registration and he appeared before the registry and completed all formalities of registration. This witness further stated that the testator was medically examined on 22.09.2014 in a hospital at Pune and he was physically and mentally fit at the time of execution of the Will. He further stated that he had been deposing in the Court without any threat or pressure. Upon Court's question, this witness stated that he was staying in Pune at the time of execution of the Will and he became an attesting witness at the request of Testator of the Will.

7. AW-3 namely Sushila Devi is the applicant herself. The applicant has been examined on 12.10.2023. This witness has stated that testator was her father-in-law and he has executed the will in favour of the applicant. This witness has also affirmed that the father-in-law was in good health and mind and has executed the Will in presence of attesting witnesses, Nischal Agarwal and Anshu Didwania. She has further stated that notices have also been served upon all the near relatives and only NR- 2 namely Sanjay Kumar Tibrewal, NR-4 Uma Choudhary and NR-5 Meera Khetan appeared through vakalatnama. But none of the appeared near relatives chose to file any caveat or objection to grant of letters of administration in favour of the applicant. She identified the original will (Exhibit-1) and also identified the signature of the testator at Page-4 of the Will (Exhibit-2). She has also stated that the valuation of the properties have been correctly given by her.

8. Learned counsel for the applicant submits that in spite of service of notices none have come to object the grant of letters of administration of this registered will. In the present case the will has already been proved according to provisions of Indian Evidence Act by both the attesting witnesses and the will has been correctly proved. It is also important to mention that the will is a registered will

of the testator as he himself appeared before the registrar and admitted execution of the will. There is no scope of any suspicion nor anybody has challenged the will in question.

9. In view of the aforesaid facts and circumstances, both the attesting witnesses have proved the Will before this Court. All witnesses in categorical term have stated that at the time of execution of Will late Chedilal Dwarikadas Tibrewal was in a good physical and mental health and he voluntarily appeared before the registry office and completed all the formalities 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 Chedilal Dwarikadas Tibrewal, in well state of conscious mind, without any coercion and pressure, fully understanding the contents of the Will, had put the signature on each and every page of the Will and on his request both the attesting witnesses put their respective signatures in the body of the Will which has been proved by the witnesses as discussed herein-above. Hence, this Court is of considered view that the testator, Chedilal Dwarikadas Tibrewal, executed the Will in favour of legatee, Sushila Devi, in a proper state of mind with proper understanding of the contents.

11. Accordingly, this application is allowed. Let the grant of probate 26.09.2014 be issued in favour of two applicant of this case with a copy of the Will annexed thereof, which shall have effect throughout the territory of India.