

**(1994) 12 GAU CK 0006**  
**In the Gauhati High Court**  
**Case No : First Appeal No. 12 of 1991**

|                                                    |            |
|----------------------------------------------------|------------|
| Ningthaukhonggam Ningol Laisharam Ongbi Ibema Devi | APPELLANT  |
| Vs                                                 |            |
| Huidrom Mani Singh and Others                      | RESPONDENT |

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**Date of Decision :** 15-12-1994

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 2  
Succession Act, 1925 — Section 276, 295, 63  
Transfer of Property Act, 1882 — Section 3

**Citation :** (1995) 3 GLR 419

**Hon'ble Judges :** N.G. Das, J

**Bench :** Single Bench

**Advocate :** N. Kerani Singh, for the Appellant; L. Brojendra Singh, for the Respondent

**Final Decision :** Dismissed

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## Judgement

N.G. Das, J.—This appeal arises from an application filed by Respondent Shri Huidrom Mani Singh in the Court of learned District Judge. Manipur u/s 276 of the Indian Succession Act, 1925 for granting him probate of a Will dated 5th October, 1984 stated to have been executed by his mother late Leitanthem Ningol Ningthoukhongjam Ongbi Ibemchaobi Devi, wife of Late N. Kanhai Singh.

2. According to the case set out by Respondent/Petitioner in his political his mother Late N.N. Ongbi Ibemchaobi Devi was at first married to late Gandha Singh of Waiton Village and out of this wed-lock he was born. After a few years of his birth his father Gandha Singh died. Smt. Ongbi Ibemchaobi Devi the Testatrix was then married to one N. Kanhai Singh of Waiton Village and a daughter namely, the present Appellant was also born out of this second marriage. After the death of Kanhai Singh i.e. 2nd husband of the Testatrix a partition suit being original partition suit No. 5/75/35/1975 was filed in the Court of Sub-Judge No. 2, Manipur and by the decree that was passed by the learned Sub-Judge in that case the Testatrix and the present Appellant get the properties

of Late Kanhai Singh in equal share.

3. The case of the Respondent was that his mother i.e. Testatrix before her death executed a Will under which she had bequeathed her share of landed property in favour of the Respondent. The Testatrix died on 29.8.87. The Respondent's case was that about 20 days prior to the death of his mother, namely, the Testatrix the latter told him that she executed a Will bequeathing her share of properties in his favour and that he would be entitled to own and possess the properties which she had bequeathed by dint of that Will. The Respondent thereafter got the Will which was found to be in a bag in the house. The Respondent thereafter filed the application as stated above for granting him probate of the (sic).

4. The Appellant resisted the application and disputed the Respondent's claim. She denied that her mother, namely, late L.N.N. Ongbi Ibemchaobi Devi had made a Will on 5th October, 1984 on that the Respondent was entitled to acquire and possess the property mentioned in the Will. It was averred that the petition was barred under Order 7 Rule 2(d) of CPC read with Section 295 of the Indian Succession Act, 1925. It was further averred that Testatrix Smti L.N.N. Ongbi Ibemchaobi Devi was blind for over 15 years preceding the date of her death and she was also dumb due to physical weakness and prolonged illness. It was contended that Smti L.N.N. Ongbi Ibemchaobi Devi was unable to move out for over 4 years preceding the date of her death. So, the contention of the Respondent that Smti L.N.N. Ongbi Ibemchaobi Devi came to the compound of the District & Sessions Judge's Court on 5.10.84 for execution of the Will was nothing but a myth and that the alleged Will was a forged one.

5. Upon the pleadings learned District Judge framed the following issues for determination of the claim of the Petitioner. The issues are:

#### ISSUES

1. Was the testatrix of sound disposing mind and did she know and approve of the contents of the Will?

2. Was the Will duly executed?

3. Is the Will a forged document?

4. Is the petition barred by Order VII Rule II(d) CPC and Section 295 Indian Succession Act, 1925.

5. Is the Petitioner entitled to grant of probate?

6. Reliefs?

6. Both the parties adduced oral as well as documentary evidence in support of their respective cases. Learned District Judge after appreciation of evidence on record held that late Leitanthem Ningol Ningthoukhogjam Ongbi Ibemchaobi Devi executed the Will on 5.10.84 AD and it was genuine and valid. With this finding learned District Judge passed order for issuing letter of administration to the

Respondent-Petitioner on his furnishing necessary undertaking as required under law.

7. Aggrieved by this judgment the daughter of the Testatrix filed this appeal.

8. Before entering into the rival contentions it would be relevant to mention here that by dint of the decree in the partition suit Testatrix Smti L.N.N. Ongbi Ibemchaobi Devi got the landed properties i.e. the properties which she bequeathed to the Respondent by the alleged Will and that she was blind at the time of the execution of the Will in question. So, what is contended by Mr. N. Kerani Singh the learned Counsel (sic) appearing on behalf of the Appellant is that the execution of the Will was not at all proved by the Respondent and a perusal of the evidence on record will make it abundantly clear that the story of execution of the Will is surrounded by suspicious circumstances. It is argued by Mr. Kerani that although it is an admitted fact that Testatrix was blind at the time when she executed the Will in question, the Respondent did not adduce any satisfactory evidence to show how the Testatrix came to court compound to execute the Will. Mr. Kerani has argued that it would appear from the evidence of P.W. 4 Y. Bhaskar Singh a pleader of Manipur Bar that Testatrix came to Court compound being accompanied by her two grand children but Respondent/Petitioner did not assign any reason why the grand children were not examined for proving the fact that Testatrix came to the court compound assisted by her grand children.

9. Mr. Brojendra Singh, the learned Counsel appearing on behalf of the Respondent has in his reply submitted that P.W. 4 is a practising lawyer of a Bar and no reason has been assigned or can be assigned as to why the pleader who made his statement on oath should be disbelieved or why he should depose falsely. Evidence of this P.W. 4 is therefore required to be scrutinised.

10. P.W. 4 deposed that prior to execution of this Will he was the appointed lawyer of L.N.N. Ongbi Ibemchaobi Devi in some other case and as such he was acquainted with her He deposed that some time before the execution of the Will in question Smti L.N.N. Ongbi Ibemchaobi Devi came to his chamber and expressed her desire to bequeath her properties in favour of his son Mani Singh to avoid future allegation. So, he asked her to come to the Cheirap Court Complex on 5.10.84 and accordingly on that day at about 11. a.m. Smti L.N.N. Ongbi Ibemchaobi Devi accompanied by her two grand children came to the Court Complex and as Petitioner desire he drafted the Will in the petition writers shed of the Cheirap Court complex and read over the contents of the Will to her in presence of the two witness, L. Ibobi Singh and H. Apabi Singh, the petition writers of the Cheirap Court Complex. His Luther version was that after reading out the Will he also explained the contents of the Will to the Testatrix when the Testatrix admitted the contents to be correct and thereafter put her thumb impression on the Will. This P.W. 4 further stated that after the Testatrix put her thumb impression on the Will in presence of him and the attesting witnesses, namely, L. Ibobi Singh and H. Apabi Singh the two petition writers also put their

signatures in his presence, During cross-examination it was suggested to the witness that Smti L.N.N. Ongbi Ibemchaobi Devi was insane and that she had no sense of understanding due to blindness and weakness of her mind at the time of execution of the alleged Will. The witness however denied the suggestion. A few other questions were also put to the witness but nothing material could be elicited from him to discredit the testimony of this witness.

11. P.W. 2 L. Ibobi Singh and P.W. 3 H. Apabi Singh are the attesting witnesses of the Will. Both P.W. 2 and P.W. 3 are the petition writers. P.W. 2 is man of 70 years and P.W. 3 is of 61 years. It is not disputed that both of them are petition writers and they sit in Cheirap Court Complex. A perusal of their evidence shows that both of them have supported the version of P.W. 4 in all material particulars. They have been cross-examined but, I do not find anything in the cross-examination to disregard their versions. It is an admitted fact that there were a number of litigations between the Testatrix and her daughter, namely, the present Appellant and the partition (sic) between Testatrix and the Appellant was decreed in favour of the Testatrix. Both these two witnesses deposed that they came to know (sic) as she came to Court frequently in connection with the pending cases. P.W. 1 categorically stated that he knew the Testatrix since 1954 as she used to come to their shed in connection with her cases. The fact that there were a number of cases between the Appellant and her mother finds further support from D.W. 2, the husband of the Appellant who stated in his evidence that there were a number of revenue cases and civil cases between his wife and the Testatrix. Moreover, during cross-examination of D.W. 1 (the Appellant.) it was suggested to her that the Testatrix came to give her evidence in connection with (sic) Said partition suit, D.W. 1 in her reply stated that she could no say how and where her mother gave evidence in connection with that civil case. So, in view of all the facts discussed above I see no reason why these two witnesses should depose falsely. During Cross-examination of these two witnesses nothing could be elicited from them to show that they were either friendly with the Respondent-Petitioner or inimical to the Appellant.

12. That apart P.W. 5 Dr. T.S. Singh who is an Associate Professor of R.M.C., Imphal deposed that he examined the Testatrix on 5.10.84 in his department at about 3.30 p.m. and on examination of the Testatrix he found that she was in full sound mental condition and accordingly, he made the endorsement Ext. 9. The Doctor P.W. 5 has been cross-examined but nothing could be elicited to disregard his evidence.

13. It is an admitted fact that the Testatrix was living with P.W.1, P.W. 1 deposed that his step father died some time in the year 1968/69 and after the sraddha ceremony was over he along with his mother came to the house of his wife where he stayed for about 6/7 years and thereafter shifted to the present house with his mother. It is also in the evidence of D.W. 1 that that her mother died in the house of her uterine brother, namely, the Respondent. She, however, deposed that her mother lived there only for one year and before that her

mother had been living with her. But this version has been contradicted by her husband, namely D.W. 2 who deposed that the Respondent (Plaintiff) took his mother to his own house about 8 or 9 years prior to her death. D.W. 3 on the other hand deposed that Testatrix continued to live in the house of her husband being looked after by her daughter and she went to the house of Respondent about 3 years prior to her death. It would therefore be quite apparent from the evidence of the D.Ws that their versions are quite discrepant and the evidence of one witness is contradicted by the other.

14. So, in view of all the facts and circumstances discussed above I see no reason why the evidence of P.W. 4 should be disbelieved. Similarly I also find no reason why P.W. 5 Doctor, who examined Testatrix on 5.10.84, should be disbelieved. Even though the grand children who accompanied Testatrix to the court complex was not examined in view of the evidence discussed above, I am of the view that non-examination of those two grand children did not create any cloud in accepting the evidence of P.Ws in respect of execution of the Will marked as Ext. X. I, therefore, find that learned District Judge has rightly arrived at the conclusion that the Testatrix was of sound mind at the time of execution of the Will and that being fully aware of the contents of the Will drafted by the P.W. 4 she executed it by putting her thumb impression on the instrument in presence of the attesting witnesses the evidence of whom has been discussed above.

15. But inspite of the evidence discussed above it is argued by the learned Counsel for the Appellant that Testatrix being blind at the lime when the Will was executed it cannot be said that this Will was executed in accordance with law, Section 63(c) of the Indian Succession Act, 1925 reads:

The will shall be attested by two or more witnesses, each of whom has seen testator sign or (sic) 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 acknowledgement of his signature or mark, or of the signature of such other persons; and each of the witnesses shall sign the, will in the presence of the Testator but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

16. A perusal of the provisions quoted above will show that under this provision a testator may sign or affix his mark out the attesting witnesses roust sign the will. Obviously, execution must precede attestation. There is nothing in the section that a blind person cannot validly execute a Will. In the instant case, it would be quite apparent from the evidence I have discussed above dial P.W. 4 who is a practicing lawyer himself drafted the Will and according to his evidence he read over the Will and explained the contents to the Testatrix who thereafter put her thumb impression thereon. The evidence of P.W.4 shows that he was the scribe and he also put his signature.

17. I. have already discussed the evidence of PWs-2 and 3, the attesting

witnesses who have stated that they saw the Testatrix putting her thumb impression on the will and after she put her thumb impression they put their signatures on the instrument. The word "attested" occurring in Section 3 of the T.P. Act needs two essential conditions for a valid attestation and those are: (1) two or more witnesses have seen the executant signed the instrument or have received from him or her a personal acknowledgement of his or her signatures or mark and, (2) with a view to attest or to bear witnesses to this fact each of them is to sign the instrument in presence of the executant. The evidence of the two attesting witnesses I have discussed above makes it abundantly dear that the executant, namely the Testatrix put her thumb impression after the contents of the will were explained to her by P.W. 4 in their presence and thereafter they put their signatures on the will as attesting witness.

18. Hence having regard to the position of law and the evidence discussed above. I am of the view that learned District Judge arrived at the right conclusion that the will in question was properly executed and proved, and as such there is no scope to interfere with the decision of the learned District Judge.

19. For the aforesaid reasons the appeal is found to be devoid of merit and accordingly it is dismissed with costs.

Send down the records immediately.