

(2012) 04 PAT CK 0063

In the Patna High Court

Case No : Appeal From Original Order No. 243 of 2011

Om Trijug Narayan Singh @ Triyug Narayan Singh APPELLANT

Vs

The estate/goods of Late Ayodhya Singh, Ganesh Singh and RESPONDENT
Ram Ladoo Singh

Date of Decision : 05-04-2012

Acts Referred:

Succession Act, 1925 — Section 218

Citation : AIR 2012 Patna 157

Hon'ble Judges : Shailesh Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shailesh Kumar Sinha, J.—This appeal is directed against the order dated 9.9.2006 passed by the Additional District Judge XII, Patna in Letters of Administration Case No. 123 of 2000, filed u/s 218 of the Indian Succession Act, 1925, whereby the application of the appellant for grant of letters of administration in his favour was rejected, hence preferred this appeal. The short facts of the case are that one Ayodhya Singh, who was unmarried, executed a Will dated 4th of January, 1983 in respect of his landed property in favour of the applicant-appellant, being one of his nephews. The said Will was attested by attesting witness Uday Kumar Singh and the signature of the testator was identified by Ram Narayan Singh. Further case is that the applicant used to look after the testator all along and out of love and affection he executed the aforesaid Will. The said Will was scribed as per the direction of the deceased. After understating the contents of the Will, in the sound state of mind and good health, the testator signed on the Will. The attesting witnesses also on the request of the testator signed the same. The scribe also put his signature and thereafter the Will was presented for registration and the same was registered on the same day. The testator was identified by one Ram Narayan Singh. The testator later died on 11th of June, 1991 leaving behind his nephews Ganesh Singh and Ram Ladoo Singh, including the applicant in whose favour the Will was

executed.

The applicant filed an application for grant of letters of administration, vide Letters of Administration Case No. 123 of 2000. The court below issued notice to the near relatives as mentioned in the application and also issued general citation. The court below, upon consideration of the evidence on the record as also on account of several circumstances, including the delay in filing the application, non-examination of any independent witness, signature over the Will not proved as also as per the Will huge landed property and other movable property involved in this case, concluded that it creates a serious doubt which makes the Will as suspected one. Accordingly, the aforesaid application was rejected.

2. Mr. Keshav Srivastava, learned Senior Counsel appearing on behalf of the appellant submits that the court below has committed serious error of law and fact in rejecting the application since, admittedly, particulars of the near relatives were mentioned in paragraph 2 of the application. As such, the court below was not right in observing that the other legal heirs were not made parties. It is submitted that the detailed particulars of near relatives are required to be given so that notices could be issued to them. As a matter of fact, notices were issued to those persons and general citation, too, was issued. However, despite notice as also general citation, no one, including the respondents, appeared to contest the application. Learned Counsel further submits that the Will in question was proved and marked as Ext. 1. As regards the signatures over the Will, the witnesses appearing as A.W. 1 and A.W. 2 have categorically stated that only on the direction of the testator, the Will was scribed and after understanding the contents of the Will, the testator signed in their presence as also the attesting witness, namely, Udai Kumar Singh put his signature. The signature of the testator was identified by one Ram Narayan Singh. However, both of them as also the scribe were dead. As such, the court below has committed an error in observing that not a single signature over the Will was proved. As a matter of fact, signatures were proved, however, exhibits were not mentioned by the Counsel with respect to each of the signatures. As regards the observation of the court to the effect that the application was filed after a long lapse of time, it is submitted that after the death of the testator, the application for grant of letters of administration or probate of a Will could be filed on any day when the right to apply accrues and since the right to apply accrues everyday after the death of testator, as such no fixed starting point of limitation could be fixed. In this regard Learned Counsel relies on a Division Bench decision of this Court in the case of Ramanand Thakur Vs. Parmanand Thakur, . It is, accordingly, submitted that the order rejecting the application deserves to be set aside.

3. On the other hand, Mr. Kumar Alok, Learned Counsel appearing on behalf of the respondents submits that the respondents had no information with regard to the aforesaid letters of administration case although issuance of notice as also general citation is not disputed. Learned Counsel, however, submits that on

perusal of the evidence on the record, it would appear that the evidences of the witnesses are vague. None of the witnesses gave the specific date of death with regard to the attesting witness, namely, Udai Kumar Singh and date of death of Ram Narayan Singh, who identified the signature of the testator, besides the death of scribe Tarkeshwar Prasad. The Learned Counsel further submits that A.W. 1 as also A.W. 2 were interested witnesses as both were the brothers-in-law (Shala) of the applicant. It is submitted that neither A.W. 1 stated that while the deed of Will was executed A.W. 2 was present, nor A.W. 2 stated that while the Will was executed, A.W. 1 was present. It is further submitted that the other near relatives, who could be the beneficiaries, were neither made parties nor their details were given. Learned Counsel submits that in totality of the materials brought on the record, the Will was rightly held to be a suspected one and accordingly the order rejecting the application is correct and valid in law.

4. Upon considering the rival submissions of the parties, it would appear that the primary question for consideration is as to the genuineness of the Will. According to the Learned Counsel for the appellant, in the face of the evidence on record to the effect that the Will in question was validly executed, attesting witness put his signature, the signature of the testator was identified and the Will was scribed on the request of the testator, who put his signature over the Will after going through the contents of the Will in presence of the witness in support of the Will, it could not be validly held that the Will is a suspected one. According to the respondents, the evidences are not cogent with respect to the genuineness of the Will in absence of the examination of the attesting witness, who was said to have died. However, no specific detail of death was brought on the record, besides the other legal heirs, who could be the beneficiaries, were neither made parties nor their details were given. The appellant, however, states that the evidence was brought on the record that the Will was executed by the testator. It is evident that the Will was scribed at the request of the testator, who after understanding the Will put his signature. Attesting witness Udai Kumar Singh put his signature. The Will was presented for its registration and the signature of the testator was identified by one Ram Narayan Singh. The applicant witnesses in their depositions have stated in detail from the time of the execution of the Will till its presentation, which they claimed to have witnessed. The witnesses also categorically stated that the attesting witnesses put their signatures in their presence. After the Will was signed by the testator, the Will was also scribed before them by the scribe, namely, Tarkeshwar Prasad. The witnesses also stated that the attesting witness and the identifier Ram Narayan Singh as also scribe Tarkeshwar Prasad were no more alive now. The above evidences are already on the record. In my opinion, only for want of exact date of death of the attesting witness, the Will cannot be held as a doubtful document. The evidence of the witnesses supporting the application cannot be rejected merely on the ground that they are related to the applicant, although their evidences need to be appreciated with due care. On perusal of the depositions of those witnesses, i.e., A.W. 1 and A.W. 2, it would appear that they have proved the Will as also the

signatures over the Will by stating in their depositions that the attesting witness as also the identifier Ram Narayan Singh as also the scribe and the testator had signed in their presence. Since nobody appeared in the court below to contest the grant of letters of administration, the evidence of the applicant cannot be rejected. The signature gets proved. Thus, in my opinion, the Will cannot be held to be a suspected one or doubtful.

5. For the reasons and the discussions as made above, the order under appeal is not sustainable in law. The same is, accordingly, set aside. Let a letters of administration of the properties with respect to the aforesaid Will dated 4.1.1983 be granted in favour of the applicant-appellant herein.

6. In the result, the appeal stands allowed. No costs. Let the lower court records be sent down to the court below without delay.