

(2007) 08 JH CK 0017
In the Jharkhand High Court

Promod Kumar Bhagat

APPELLANT

Vs

Gopal Ram Bhagat and Others

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Evidence Act, 1872 — Section 68, 74
Succession Act, 1925 — Section 278, 63

Citation : (2007) 4 JCR 275

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—This appeal is directed against the judgment dated 16.8.1988, passed by the IVth Additional Judicial Commissioner, Ranchi in Probate Case No. 31 of 1982, whereby letters of administration in respect of the Will dated 12.3.1964 purportedly executed by one Naboram Bhagat was granted in favour of the appellant/Opposite-Party No. 1.

2. The petition for grant of letter of administration u/s 278 of the Indian Succession Act was filed by the respondent No. 1, Gopal Ram Bhagat claiming that he being one of the legatees in the Will executed by Naboram Bhagat, is entitled to grant of letter of administration in respect of the properties bequeathed by the testator in his favour.

The case of the petitioner/respondent No. 1 is that Naboram Bhagat who was the resident of the village Bundu within the district of Ranchi, executed a Will dated 12.3.1964, which was his last testamentary declaration in respect of his properties whereby he had bequeathed different portions of his properties in favour of the petitioner Gopal Ram Bhagat and others. The testator had, however, not appointed any executor under the Will. The testator Naboram Bhagat died on 8.5.1967 leaving behind the petitioner and the other Opposite-Parties, namely, the respondents as his nearest relations. It is further contended that though the petitioner/respondent No. 1 was one of the beneficiaries in the

Will, but he being a minor at the relevant time, he could not file the petition for grant of letter of administration earlier. The further contention of the petitioner/respondent No. 1 was that to his knowledge, the original Will was handed over by the testator Naboram Bhagat to his wife Most. Sumu but later on the Opposite-Party No. 1, namely, Brindaban Bhagat had taken and retained the original Will in his possession.

3. The claim of the aforementioned propounder of the will was contested by one of the opposite-parties, namely, Brindaban Bhagat father of the present appellant, Pramod Kumar Bhagat. The objector denied the petitioner's claim that the late Naboram Bhagat had executed any Will dated 12.3.1964. Challenging the alleged Will to be forged and brought on record through some person, who had impersonated Naboram Bhagat, the objector has contended that Naboram Bhagat could not have executed any Will of the properties mentioned in the purported Will, since the entire properties were joint with his other brothers and there was no partition of the joint family properties by metes and bounds. The objector further stated that though a Partition Suit No. 32 of 1962 was filed in the Court of the Special Sub-Judge, Ranchi for the partition of the joint family properties amongst, Naboram Bhagat and his brothers, namely, Bala Ram, Brindaban and Bhola Nath Bhagat and the suit was disposed of on the basis of the compromise filed on 26.4.1962 but the compromise was never acted upon and, therefore, the joint family properties remained always joint without there being any partition by metes and bounds. The objector has further pleaded that the prayer for the letter of administration could not be granted on account of the fact that the petition for the grant of letter of administration was filed more than 12 years after the alleged date of execution of the Will.

4. On the basis of the rival pleadings, the learned Court below had framed the following issues for consideration:

(i) Whether Naboram Bhagat executed a Will on 12.3.1964 in favour of the petitioners and others as legatees of the Will in state of his sound mind?

(ii) Whether the properties included in Will belonged exclusively to Naboram Bhagat?

(iii) Whether the letter of administration could be granted in favour of the petitioner in term of his prayer?

5. In the proceedings, before the Court below, both the parties have led their respective evidences. The original Will was, however, not brought on record and the petitioner had relied upon the Certified copy of the Will, the contents of which were sought to be proved by the witnesses, employed at the Registrar's Office. The execution of the Will was proved by the deed writer, who claimed that he had scribed the original of the Will according to the directions of the testator Naboram Bhagat. The evidence on the point that the Will was executed by the testator Naboram Bhagat was adduced on behalf of the plaintiff by PW 5 who has claimed to be one of the attesting witnesses. On the basis of the oral evidences,

the learned Court below had recorded its finding that the petitioner had adduced sufficient reliable evidence to establish that Naboram Bhagat has executed his Will on 12.3.1964. The learned Court below has also observed that the objector had not adduced any reliable evidence to prove that on the date of execution of the Will, the testator was not in sound mental health.

On the other issue, as to whether the properties purportedly bequeathed by the testator in favour of the beneficiaries, named in the Will was the exclusive properties of the testator, the learned Court below relied upon the oral evidences adduced on behalf of the petitioner and also the oral evidences adduced by the objector and had recorded its finding that the properties mentioned in the Will did belong exclusively to the testator in view of the fact that even as admitted by the objector, a Partition Suit was filed for partition of the joint family properties between the testator and his brothers and by virtue of a compromise between them, the suit was disposed of in terms of the compromise and the shares, which were allotted to the individual members of the joint family, were occupied by them individually.

On the objector's plea that the petition for grant of letter of administration was filed after a long delay of ten years from the date of execution of the Will, the learned Court below has observed that there is no limitation under the law for filing the petition for grant of letter of administration and even otherwise, the petitioner has explained the delay on the ground that on the date of execution of the Will, he was a minor and it was only after his gaining age of majority that he could apply for the grant of letters of administration.

6. The appellant has assailed the impugned judgment of the learned Court below primarily on the ground that the learned Court below has erred in entertaining the application of the petitioner for the grant of letter of administration although the original Will was not produced by the petitioner nor has the certified copy of the Will been proved in evidence according to the procedure established by law. The further ground advanced is that the learned Court below had erred in failing to observe the principles of law that in the proceeding of the grant of probate, the propounder had to show by satisfactory evidence that the Will was signed by the testator and that the testator at the relevant time was in a sound and disposing state of mind and that he understood the nature and fact of the instrument and put his signature on the document out of his free Will.

Learned Counsel for the appellant while highlighting the above mentioned grounds, argued further that in view of the specific case of the appellant that the Will was forged and fabricated, it was upon the petitioner/respondent No. 1 to prove that the Will was not forged or fabricated and in absence of any such evidence to dispel the charges levelled against the propounder, the learned Court below should not have granted the letter of administration in favour of the respondent No. 1. Learned Counsel adds further that though PW 4 Laxmi Choudhary had deposed that he had scribed the deed of the Will and signed upon the same on the instructions of the testator but he had categorically admitted in

his cross-examination that he did not identify the testator personally, nor did he know the person, who had identified the testator. Likewise, PW 5 Amar Singh has though claimed himself to be an attesting witness to the Will but he has failed to name the other witnesses, who had identified the testator and the other witnesses to the Will. Learned Counsel adds further that in fact no satisfactory evidence was led by the propounder as to how the testator was brought to the Registrar Office even in his ailing health conditions. Learned Counsel adds further that in view of the specific denial by the appellant regarding the genuineness of the attestation in the Will, the petitioner/respondent No. 1 should have called for the relevant Registers containing the signature of the testator, for the purposes of comparing the same with the testator" as admitted signatures and in absence of any such evidence brought on record by the petitioner, the learned Court below ought to have drawn adverse inference and should have dismissed the petitioner"s claim for grant of letter of administration.

7. Learned Counsel for the respondent No. 1 on the other hand, while refuting and controverting the entire grounds advanced by the appellants as being misconceived and misleading submits that the petitioner/respondent No. 1 has adduced sufficient evidence to confirm that the original Will was taken away by the Brindaban Bhagat (the father of the appellant) and the same was in his custody, ever since, after he had obtained the same from the widow of the testator, late Naboram Bhagat. Since the original Will was not in the custody of the petitioner, the certified copy thereof was called for and adduced in evidence by the petitioner/respondent No. 1 and the certified copy of the Will was adequately proved by the evidence of not only the deed writer, who had scribed the original Will but also by the Clerk, employed at the Registrar"s Office, who had confirmed that the original Will was registered in his presence at the Registry Office. Learned Counsel adds further that out of the two witnesses, who had identified the testator and had confirmed the execution of the Will in their presence by the testator, one witness, namely, Baleshwar Nayak, who was one of the signatories to the Will, had died and the other witness, namely, PW 5 (Amar Singh) was examined on behalf of the petitioner who by his evidence has confirmed the execution of the Will.

8. The points which called for determination in this Appeal is whether the findings of the learned Court below that the Will as" propounded by the petitioner/respondent No. 1 was in fact executed by late Naboram Bhagat, during his lifetime and whether the propounder of the Will has proved the execution of the Will according to the legal procedure.

9. Section 63 of the Indian Succession Act, 1925 provides for the mode of execution of unprivileged Wills. The section provides that the testator shall sign or affix his mark to the Will, or some other person shall sign it in his presence and by his execution. It also provides that the Will shall be attested by two or more witnesses, each of whom had seen the testator sign or affix his 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 acknowledgment of his signature or mark, or the signature of such other person and each of the witnesses shall sign the Will in 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.

In order to prove the Will, it would be necessary, therefore, to prove that the testator had signed or affixed his mark to the Will and that two or more witnesses have attested the Will by putting their respective signatures in the presence of the testator and two or more attesting witnesses in whose presence, the Will was executed and signed by the testator had put their respective signatures to the Will as attesting witnesses.

10. The principles, which govern the proving of a Will are laid down u/s 68 of the Indian Evidence Act. The onus of proving of Will is on the propounder and in the absence of suspicious circumstances, proof of testamentary capacity and the signature of the testator would be sufficient to discharge the onus. The mode of proving a Will does not ordinarily differ from that of any other document except as to the special requirement of attestation prescribed u/s 68 of the Indian Evidence Act. Such evidence can very well be furnished by the scribe of the Will, who could speak regarding the execution of it. Where there are suspicious circumstances, it is for the propounder to explain them. Mere registration of a Will will not by itself be sufficient to dispel all suspicion regarding execution and attestation without submitting the Registration to a close examination.

Thus the propounder of the Will has to prove that the Will was executed and signed by the testator in presence of witnesses, who had attested the execution of the Will by the testator by putting their respective signatures to the Will. The propounder is also required to prove that the testator had the testamentary capacity to execute the Will, that is to say that the testator was in sound mental health and that he had executed the Will voluntarily. Once, the onus is discharged by the propounder, if the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. In order to prove the execution of the Will, it is not necessary to adduce the evidence of both the attesting witnesses. A will can be proved even by one of the attesting witnesses.

11. Where the original document is lost, then for the proof of execution of the document reliance can be placed by adducing the certified copies thereof in evidence. Section 74 of the Indian Evidence Act refers to public documents and it includes the public records kept in any state of private documents. Public record of documents kept under the Registration Act, fall within the category of public documents and, as such the certified copy of the record would be admissible in evidence however, the execution and contents of the document have still to be provided in the ordinary way.

12. In the instant case, the propounder of the Will has sought to prove the execution of the Will by the testator by producing the certified copy of the

document obtained from the Registrar's office. He has claimed that he is not in possession of the original. In order to prove that the Will was executed and registered the petitioner has adduced the evidence of PW 2, who has affirmed that the testator Naboram Bhagat, being his father-in-law had executed the Will in favour of Gopal Bhagat, Pramod Kumar Bhagat, Manish Kumar, Most. Chhathu Devi and Most. Sumu in respect of the properties belonging to the testator. He has also stated that the original Will was in the custody of Brindaban Bhagat (the father of the appellant, namely, Pramod Kumar Bhagat). The witness has also confirmed that the Will was executed by the testator at the Registration Office at Ranchi in his presence and in the presence of two attesting witnesses, one of whom was Bileshwar Nayak, who had since died. The evidence of PW 3, who is a clerk employed at the Registrar's Office at Ranchi, has been adduced to prove that the certified copy as adduced in the evidence is that of the Will, which was executed by the testator Naboram Bhagat and registered at the Registrar's Office. The certified copy has thus been proved in evidence by this witness. The evidence of PW 4 Laxmi Choudhary has been adduced to confirm that this witness has scribed the original Will. The witness has deposed that he had scribed the original Will according to the directions of the testator Naboram Bhagat. PW 5, Amar Singh has deposed in his evidence that he knew Naboram Bhagat and that Naboram Bhagat has executed the Will in his presence bequeathing his properties in favour of the beneficiaries named therein and that the Testator had put the signature on the Will in his presence and further, that he himself had put his signature on the Will at the request of Naboram Bhagat. He has also proved the contents of the certified copy of the Will and bearing the signature of the testator as also of the witness.

13. From the perusal of the certified copy of the Will (Exhibit 1), it transpires that the document declares that the original thereof had contained the signature of the testator Naboram Bhagat besides the signatures of the scribe, Laxmi Choudhary and the signatures of the two attesting witnesses, namely, Amar Singh and Baleshwar Nayak. It cannot be said, therefore, that the execution of the Will by the testator has not been proved or that the certified copy of the Will obtained from the office of the Registrar, has not been adduced in evidence, according to the procedure laid down under the law. The fact that Naboram Bhagat had executed his testamentary declaration in respect of the properties mentioned in the Will cannot, therefore, be disputed. The objector/appellant has disputed the genuineness of the Will on two grounds, each being contrary to the other. The first ground is that Naboram Bhagat had never executed the Will and that the document claimed by the propounder as the Will is a forged document executed by some im-poster, who had impersonated Naboram Bhagat. The second ground as pleaded by the objector is that on the date of execution of the Will Naboram Bhagat was in extremely ailing health conditions and was not mentally sound. Since the objector had claimed that the Will was a forged document the onus was on him to prove the same. On going through the evidences adduced by the objector/appellant, there does not appear any such

evidence to prove his claim that the Will was a forged document. It may be noted that from the evidence of PW 5, who has claimed himself to be one of the attesting witnesses, nothing has been elicited in his cross-examination to suggest that his testimony is unreliable.

Likewise, no definite evidence has been led by the objector/appellant to confirm that on the date of execution of the Will, the testator was suffering from unsoundness of mind. The mere evidence that the testator was suffering ill health since prior to the execution of the Will would not be sufficient in itself to lead to the inference that the Will was not executed by the testator in proper mental health.

14 The next ground advanced by the learned Counsel for the appellant is that on the date of execution of the Will, the testator did not have the absolute title to the properties mentioned in the Will and, therefore, he could not have legally bequeathed the properties mentioned in the will in favour of the beneficiaries, named therein. Although it is not for the Court granting probate or letter of administration to decide the issue of title of the testator, over the bequeathed properties, yet since the learned Court below had recorded its findings on this issue, it would be relevant to refer to the pleadings of the parties and also to the evidences led by them in this case.

The objector/appellant has admitted that two years prior to the execution of the Will, a partition suit was filed in the Court of the Special Sub-Judge for partition of the joint properties held by Naboram Bhagat and his brothers and the suit was disposed of on the basis of the compromise effected in between the joint holders, under which shares in the joint properties were allotted to each of the brothers in the joint properties. The objector has however claimed that notwithstanding the compromise effected in the Title Partition Suit the properties continued to remain join and were held by all the brothers including the testator and there was in fact no partition of the properties by metes and bounds. The petitioner/respondent No. 1 has claimed on the other hand that pursuant to the compromise in the Partition suit specific shares allotted to each of the brothers was taken and possessed by them and the brothers live separate both in mess and residence from each other in their respective shares of the joint properties. This fact has been confirmed by PW1 and even by the DW 1 who has acknowledged in his cross-examination that Naboram Bhagat and his own exclusive properties. The objector/ appellant who has examined himself as DW 2 has also acknowledged in his evidence that there was a partition between Naboram Bhagat and his brothers in respect of the joint properties held by them though he does not know about the details of the partition between the brothers. He has expressed his ignorance that in the partition suit his own father had deposed and had confirmed the fact of partition of the joint properties between Naboram Bhagat and his brothers. Furthermore the recitals in the Will categorically indicate that the properties mentioned in the Will were exclusive properties of the testator. It would be interesting to note that prominent among the beneficiaries of the Will

are the present appellant and his own sister and a major proportion of the testator's properties have been bequeathed in their favour as compared to the properties bequeathed in favour of the respondent No. 1.

In the light of the above discussions, I do not find any impropriety or infirmity in the findings recorded by the learned Court below on the relevant issues involved in this case and in the order granting probate of the Will in favour of the respondent No. 1 in respect of the properties exclusively bequeathed to him. I do not find any merit in this appeal and, accordingly, this appeal is dismissed. The parties shall however, bear their own respective costs.