
(2007) 08 PAT CK 0135
In the Patna High Court

Ram Chandra Prasad Keshari

APPELLANT

Vs

Lakshmi Narain Jaiswal (Dead) represented by his Legal
Representatives

RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Citation : (2007) 08 PAT CK 0135

Final Decision : Dismissed

Judgement

Syed Md. Mahfooz Alam, J.—This appeal has been preferred against the judgment and decree dated 10.4.1976 passed by Sri Ram Swarath Shahi, Additional District Judge IIIrd, Patna, in Title Suit No. 27 of 1975, whereby he has been pleased to dismiss the suit of the plaintiff-appellant for grant of probate of the Will dated 10.1.1970 alleged to have been executed by Most. Gujari Devi.

2. Plaintiff's case, in brief, is that Most. Gujari Devi w/o late Madan Lal Kesharwani was the resident of Mohalla Dalhatta Patna City, P.S. Malsalami, District: Patna. The plaintiff claims to be the grand son in relation of the said Gujari Devi and being her grand son he was residing with Most. Gujari Devi and was looking after her affairs. The said Gujari Devi was very much pleased with the services rendered to her by the plaintiff and, so, she had full love and affection with the plaintiff and in token of love and affection she executed a Will in favour of the plaintiff with respect to her entire property. After execution of the said will Most. Gujari Devi died on 25.3.1970 at her residence at Mohalla Dalhatta and so, the necessity of obtaining probate of the Will arose. Accordingly, a probate case bearing No. 158 of 1970 was filed before the District Judge, Patna for grant of probate of the Will dated 10.1.1970. It is further said that the deceased Most. Gujari Devi had not left any near relative behind her and, so, initially no relative of the deceased was made party to the application filed for grant of probate. One Shri Laxmi Narayan Jaiswal, the original respondent appeared and filed caveat in the probate case and after contest the probate case was converted into Title Suit.

3. The case of the original respondent Sri Laxmi Narain Jaiswal as per the written statement filed by him, in brief, is that the plaintiff Ram Chandra Prasad Keshari has no locus standie to file the probate case as deceased Gujari Devi had not executed any Will in favour of the plaintiff on 10.1.1970 and, as such, any such document is forged and fabricated and the same was manufactured long after her death to cook up false claim in respect of her properties. It is stated that Most. Gujari Devi had filed S.C.C. suit No. 108/83 of 1968 before the Sub-Judge, Patna against Laxmi Narain Jaiswal (original defendant) for recovery of arrears of rent in respect of Holding No. 92/94, Circle No. 207, Ward No. 30 which was in his occupation. In that S.C.C. suit after the death of Gujari Devi, the plaintiff Ram Chandra Prasad Keshri filed an application for substitution on 30.4.1970 but on that date he did not disclose that Most. Gujari Devi had executed any Will in his favour, rather, the plaintiff preferred substitution petition claiming to be the heir of Most. Gujari Devi. In the said S.C.C. suit the original defendant filed objection and stated that the plaintiff Ram Chandra Prasad Keshri is not related to Most. Gujari and can not be impleaded as party being heir of Most. Gujari Devi, whereupon, the Court directed the plaintiff to file genealogy to establish his relationship with Most. Gujari Devi but the plaintiff failed to file any genealogical table and, as such, the prayer of the plaintiff for impleading him as party in S.C.C. suit in place of Most. Gujari was rejected on 20.11.1970. The plaintiff again tried to be impleaded as a party in T.A. No. 47/39 of 1968-70 in place of Most. Gujari Devi but could not succeed and when the plaintiff failed in his attempt to be impleaded as party in S.C.C. suit and in appeal, he filed probate case on the basis of forged, fabricated, manufactured and anti dated "Sada" Will in order to usurp the property of Most. Gujari Devi. Further case of the defendant is that Madan Lal Keshri, the husband of Most Gujari Devi died issueless leaving behind his widow Most. Gujari Devi. The plaintiff was working as a trainee employee in the business of the husband of Most. Gujari Devi and he colluded with other employees to grab her property and with the backing of his close relations he started placing false claim over the property of Most. Gujari on the basis of forged and fabricated Will. It is said that the plaintiff has no right to apply for grant of probate or for grant of letter of administration. The entire recitals contained in the Will are false and concocted and the same was not prepared, scribed or typed at the instructions of deceased Most. Gujari Devi nor it was read over and explained to her. The same is neither executed nor signed by her and, if any, signature of Most. Gujari appears on the alleged deed then the same might have been obtained on the pretext of making pairvi in Title Suit No. 217 of 1964 which might have been utilised for forging and fabricating the Will. On the basis of the above pleadings, the prayer has been made to dismiss the suit.

4. From perusal of the lower court records, it appears that the learned trial court on the basis of the pleadings of both the parties framed as many as five issues in the suit for consideration which are as follows

I. Is the suit as framed maintainable?

II. Has the plaintiff got any cause of action for the suit?

III. Is the Will in question genuine, valid and operative and duly executed by Most. Gujar Devī?

IV. Is the plaintiff entitled to the grant of probate?

V. To what relief or reliefs, if any the plaintiff is entitled?

5. It appears that the trial Court considered Issue No. 3 and 4 as main issues involved in the suit and on making discussions on both the issues the trial court held that the Will in question, is not genuine, valid and operative and the same was never executed by Most. Gujar Devī and, so, the plaintiff is not entitled for grant of Probate of the Will. This finding of the trial court has been challenged by the plaintiff -appellant and, therefore, I would like to see in the following paragraphs as to whether the finding of the trial court in respect of Issue Nos. 3 and 4 is correct or not?

6. It is now admitted position that the plaintiff-appellant is not the heir of Most. Gujar Devī as he is neither related to Most. Gujar Devī nor to her husband in any manner. However, there is no legal bar that a Will can not be executed in favour of any stranger. Therefore, if it is proved that Most. Gujar Devī had executed the Will in favour of the plaintiff-appellant then the plaintiff-appellant will be entitled to get probate of the Will and if it is held that Most. Gujar had not executed any such Will then the plaintiff-appellant would not be entitled to get probate.

7. First of all, I would like to see what are the requirement of a valid deed. According to Section 59 of the Indian Succession Act, 1952, (hereinafter to be referred as "Act") every person of sound mind not being a minor may dispose of his property by Will. As per explanation 4 of Section 59 of the Act, no person can make a Will while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.

8. Thus, Section 59 of the Act establishes that there are certain conditions in which a Will can be validly executed. Before coming to the question whether the Will, in question, is a valid document, I would like to see whether the requirements of the execution of the Will have been fulfilled or not. The requirement of execution of unprivileged Will have been stated in Section 63 of the Act, which is quoted below:

63. Execution of unprivileged Wills.-- Every testator, not being a soldier employed in an expedition nor engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules:

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing

for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will .

(c) The Will shall be attested by two or more witnesses, each of whom has 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 of the signature of such other person; 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.

9. Thus, from the reading of Section 63 of the Act, it is clear that besides the signature or the thumb impression of the testator, the Will should be attested by at least two witnesses.

10. Let me firstly see whether the Will in question was executed in accordance with law or not. The alleged Will has been marked as Exhibit-1 in this case on the basis of the statement of the evidence of P.W.1 Suraj Prasad. The Will runs in four pages and on each pages in the margin there is signature of Gujari Devi in her own pen. The four signatures of Gujari Devi on the Will have been marked as Exhibit-B, B/1, B/2 and B/3 on the basis of the statement of P.W.6 Jai Lal Keshri. It further transpires that Suraj Prasad son of Baidyanath Prasad of Mohalla Mirjawan Ki Chawani, Patna City (P.W.1) and Jai Lai Keshari son of Ram Prasad Ram Keshri of Mohalla: Dalhatta, Patna City, (P.W.6) have put their signature on the Will as attesting witnesses. Besides that there is signature of Deed Writer Kanhailal (P.W.3), who has deposed that he had typed the Will on the basis of the draft handed over to him by deed writer Sachidanand Babu (P.W.4). He has further deposed that after typing the Will he had handed over the typed copy of the Will as well as the draft to Sachidanand Babu. However, he admitted that after typing the Will he had put his signature on the typed copy of Will (marked Exhibit-2). The evidence of P.W.1 Suraj Prasad and P.W.6 Jai Lal Keshari shows that in their presence Gujari Devi had executed the alleged Will (Exhibit-1) on which both the witnesses had put their signature as an attesting witnesses. The evidence of P.W.4 Sachidanand Sinha shows that he had taken the dictation from Gujari Devi with regard to the contents of the Will and had prepared a draft which was later on typed by Kanhailal (P.W.3). Thus, from the evidence of the above said witnesses, it is established that the requirements of law as laid down under the provision of Section 63 of the Act have been complied with.

11. It has been argued by the learned Advocate of the respondent that merely by showing that the Will bears the signature of testator and the same was signed by two attesting witnesses the appellant will not be entitled to get the probate of the Will unless he establishes that the Will is not vitiated by suspicious circumstances. I think that the argument of the learned Advocate of the respondent is correct and in accordance with law and only on proof of the fact that the Will has not been executed under suspicious circumstances the appellant

will be entitled to get probate of the Will. At this stage, it was argued by the learned Advocate of the appellant that the respondent had got no locus standie to challenge the genuineness of the Will as he has got no interest in the estate of the deceased. In this regard, learned Counsel has placed reliance on the following decision i.e. Smt. Dular Kuer Vs. Smt. Kesar Kuer and Others, and In Re: Late Rajo Singh Ramautar Singh alias Ganesh Shankar . In Smt. Dular Kuer Vs. Smt. Kesar Kuer and Others, , it has been held that a person having no possible chance of succeeding to testator's estate has no locus standie to challenge the Will. In In Re: Late Rajo Singh Ramautar Singh alias Ganesh Shankar , it has been held that the test to determine whether a person has an interest in the estate and can therefore raise objection to grant of probate is whether but for the Will, the caveator would be entitled to a right of which that will deprived him. If answer to the question is in the affirmative, he must be held to have interest in the estate and entitled to oppose the grant.

12. On the basis of the above two decisions, it has been argued by the learned Advocate of the appellant that the respondent is neither the heir of the deceased testator (Gujari Devi) nor heir of her husband and in no way he was to inherit the property of Gujari Devi after her death, as such, the respondent has got no locus standie to contest the claim of the appellant for grant of probate of the Will. It has further been argued that respondent is also not a creditor of deceased Gujari Devi which can make him entitled to challenge the Will and in this regard he has placed reliance upon the decision reported in R.S. Sinha Vs. Miss Salena Hector, and Dinabandhu Roy Brajaraj Saha, Firm Vs. Sarala Sundari Dassya, .

13. Admittedly, the respondent is not the heir of deceased Gujari Devi and he has no interest in the property of Gujari Devi. He is also not creditor of Gujari Devi and, as such, there is no difficulty in holding that the respondent has got no locus standie to challenge the execution of the Will. It has been argued by the learned Advocate of the respondent that admittedly the respondent is a tenant in the house of Gujari Devi and he is in possession of the properties mentioned in the Will and has got every right to protect the property from going it into the hands of the unauthorised persons. I am unmoved by the above argument of learned Advocate of the respondent and I am of the view that since the respondent has got no interest in the property of Gujari Devi, so, he is not entitled to challenge the execution of the Will but only because of the fact that the respondent is debarred from challenging the Will in question on the ground that he is neither the heir of Gujari Devi nor of her husband and has got no interest in the property of Gujari Devi, the appellant will not automatically become entitled for grant of probate of the Will unless it is established that the execution of the Will is free from all suspicious circumstances and it is the duty of the Court to make proper enquiry before grant of the probate of the Will that the execution of the Will is free from all suspicious circumstances. Since the respondent in this case has assisted the Court in arriving at right decision, I am of the view that although the respondent has got no locus standie to challenge

the Will but he being in possession of the house as tenant under deceased Gujri Devi has a right to protect the property from going into the hands of unauthorised person or persons and can assist the court in coming to the right decision. Under such circumstances, the entire materials brought on record with the assistance of the respondent can not be thrown out.

14. It has been argued by the learned Advocate of the respondent that in probate case the onus is always on the plaintiff to prove that the deed of gift in respect of which he has asked the Court to issue probate is a legal, valid and genuine document. He argued that the onus is on the plaintiff to satisfy the Court that the Will is genuine. According to the submission of learned Advocate of the respondent following are the suspicious circumstances which make the Will forged and fabricated:

(i) That the Will is unregistered.

(ii) That the original draft which was prepared by Scribe Sachidanand Sinha was not produced and the typed copy of the Will does not incorporate that the Will was drafted by Scribe Sachidanand Sinha (P.W.4) on the dictation of Most. Gujari Devi.

(iii) That identifier of Most. Gujari Devi, namely, Nandan Prasad, whose signature appears at page 2 of the Will has not been examined by the plaintiff.

(iv) That the signatures of Gujari Devi on the Will are on the margin of each page and not below the contents.

(v) That the signatures of Most. Gujari Devi do not bear the date and the Will has not been typed on stamp paper as stated by P.W.1 at para 10.

(vi) The appellant did not disclose the existence of the Will in S.S.C. Case No. 108/83 of 1968 in which he had filed a petition for impleading him as party on the ground of being heir of the deceased Gujari Devi which was dismissed on 20.11.70 and for the first time on 26.11.1970 when he filed probate case he disclosed the existence of Will.

15. I would like to take up all these points one by one. From perusal of Exhibit-1 i.e. the Will, in question, it appears that the said Will is an unregistered document. It is true that it is not mandatory that the Will should always be a registered document and because of the fact that the Will is unregistered no inference can be drawn against the genuineness of the Will. In this connection, reliance can be placed upon the decision reported in Ishwardeo Narain Singh Vs. Sm. Kamta Devi and Others, . However, the question arises as to why the Will was not produced before the Registrar for registration when after its execution on 10.1.1970 Gujari Devi, the testator remained alive for about 2-3 months (vide para 8 of P.W.5 Ram Chandra Prasad Keshri). The statement made by P.W.5 at para 8 establishes this fact that there was sufficient time for the appellant as well as for the executant of the Will, namely, Gujari Devi to get the Will registered and, therefore, non-registration of the Will is a circumstance which creates doubt

about the genuineness of the Will.

16. From perusal of the Will which has been marked Exhibit-1 in the suit, it further transpires that the same was prepared by Typist Kanhailal on 9.1.1970 i.e. one day before the execution of the Will (the Will was executed on 10.1.1970). According to the evidence of Kanhailal, Typist, who was examined as P.W.3, he had typed the Will on the basis of a draft handed over to him by Sachidanand Babu (Scribe, (P.W.4) but none of the attesting witnesses has supported this fact that firstly a draft of the Will was prepared at the instance of Gujarati Devi then it was handed over to Sachidanand Sinha (P.W.4) for getting it typed by P.W.3, rather the attesting witnesses, namely, Suraj Prasad (P.W.1) and Jai Lal Keshri (P.W.6) have deposed that at one stretch the Will was prepared by the scribe and then the Will was read over to Gujarati Devi, who put her L.T.I. and thereafter at her instance they also put their signatures on the Will. Thus, the evidence of P.W. 1 and 6 contradicts the evidence of P.W.4 that firstly the draft of the Will was prepared, and then it was typed and executed. Moreover, the non-production of the draft of Will also creates doubt about the genuineness of the Will (Exhibit-1).

17. Exhibit-1 the alleged Will shows that one Nandan Prasad had also put his signature on the Will either as attesting witness or as identifier of Most. Gujarati Devi and this fact has also come in the deposition of P.W.2 Mahabir Lal but he has been withheld by the plaintiff. The non-examination of Nandan Prasad creates doubt about the genuineness of the Will (Exhibit-1).

18. As per Clause B of Section 63 of the Act, the signature or thumb impression of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will. This provision clearly shows that the testator of the Will must put his or her signature or thumb impression on the Will covering the recitals of the Will i.e. at the end of each page of the Will which will show that he or she was fully aware of the recitals of the Will. Mere presence of signature of the testator on the margin of pages of the Will is not sufficient to hold that the testator had intended to give effect to his or her writing on the Will. In the instant case, it appears that all the signatures of Gujarati Devi have been obtained on the margin of the paper and it does not show that Gujarati Devi had intended to give effect to the writing of the Will. This circumstance also makes the execution of the Will doubtful.

19. It appears from perusal of Exhibit-1 that Gujarati Devi was a literate lady and that is why she put her signatures on the alleged Will but strangely enough the date of execution of the Will has not been given by Gujarati Devi below any of her signature. Thus, this circumstance goes to prove that the alleged signature of Gujarati Devi might have been obtained for any other purpose. My view finds support from the statement of P.W.1, who has stated at para 10 that the Will was executed on stamp paper and not on Sada paper. It has been argued by the learned Counsel of the respondent that it is admitted position that the deceased Gujarati Devi before her death was fighting S.C.C. suit and eviction suit and there

is every possibility that her signature might have been obtained by his pairvikar for doing pairvi in the case on some papers which were later on used for preparation of forged Will. The argument of the learned Counsel for the respondent appears to be convincing in view of the fact that the papers on which the Will was prepared were generally used for making pairvi in cases pending before the Civil Court as admittedly Most. Gujari Devi was fighting S.C.C. suit No. 108/83 of 1968 and T.A. No. 47/39 of 1968-70, so, this circumstance also establishes that the Will is not genuine document.

20. The last but most important ground which makes the alleged Will suspicious is that after the death of Gujari Devi on 25.3.1970 the appellant filed petition for impleading him as party in S.C.C. suit on 30.4.1970 but in that suit he did not disclose that Gujari Devi had executed any Will in his favour, it appears that the said application dated 30.4.2007 of the appellant filed in the S.C.C. case was dismissed on 20.11.1970 and then on 26.11.1970 he for the first time claimed by filing probate case that Gujari Devi had executed a Will in his favour. This circumstance raises strong suspicion that the Will was manufactured after his claim for making him party in place of Gujari Devi in S.C.C. suit failed.

21. Thus, all the above facts establish beyond doubt that the Will alleged to have been executed in favour of the appellant by Most. Gujari Devi is surrounded by suspicious circumstances and can not be held to be a genuine and valid Will. Therefore, I am of the view that the Court has rightly refused to grant probate of the Will in favour of the appellant.

22. Before I part with the judgment, I would like to clarify that what will be the status of the respondent. Admittedly, the respondent is a tenant in the premises covered under the Will and thus, his status is of tenant, who can not inherit the interest of Gujari Devi in the property after her death. Admittedly, no near relative or heir of Gujari Devi came forward to claim the property left by Gujari Devi on the basis of inheritance and, therefore, it would be deemed that Gujari Devi has not left any heir behind her. Under such circumstances, the State of Bihar will become the owner of the property left by Most. Gujari Devi and, therefore, I hold that all the properties mentioned in the Will or any other properties left by Most. Gujari Devi vest in the State of Bihar. Since the property lies within the jurisdiction of the Patna District, as such, the District Magistrate, Patna, is directed to take immediate possession of the property left by Most. Gujari Devi mentioned in the Will as the property has vested in the State of Bihar. It is further directed that after taking possession of the property the District Magistrate will take all necessary steps for realisation of arrears of rent as well as current rent from the respondent and, if so chooses, the District Magistrate shall take necessary steps for eviction of the respondent from the house under occupation of respondent i.e. the subject matter of the Will. It is further observed that the State of Bihar which has been impleaded as respondent in T.A. No. 47/39 of 1968-70 in place of Most. Gujari Devi vide order dated 5.7.71 (vide Exhibit-D) shall take necessary steps in the appeal in accordance

with law.

23. In the result, I do not find any merit in this appeal and the same is accordingly dismissed with the direction/observation given above.

24. Let a copy of this judgment be forwarded to the District Magistrate, Patna, for immediate compliance.

25. In the facts of the case, there will be no order as to costs.