
(2001) 08 PAT CK 0128
In the Patna High Court
Case No : Test Suit No. 2 of 1987

Shri Jagannath Prasad Thakur @ Jagarnath Prasad Thakur, APPELLANT
deceased (Testator) and Smt. Lalita Devi and Another

Vs

Harkesh Thakur RESPONDENT

Date of Decision : 03-08-2001

Acts Referred:

Citation : (2001) 3 PLJR 757

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Ram Shankar Pradhan, for the Appellant; Damodar Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—The Plaintiffs have filed the test case for grant of Letters of Administration with the will annexed to it which is stated to have been executed by Jagannath Prasad Thakur @ Jagarnath Prasad Thakur in their favour.

2. The objector Harkesh Thakur filed a caveat to the grant of Letters of Administration on the ground that the will was not executed by Jagannath Prasad Thakur and thereupon the said test case was converted into Test suit.

3. Admitted position is that Jagannath Prasad Thakur was resident of village Rajpur, P.S. Brahmpur, district--Bhojpur, now, district Buxar. He died on 17.8.1985 leaving behind his widow Parwati Devi, three sons, namely, Harkesh Thakur, Kalika Prasad Thakur and Narbdeswar Prasad Thakur and three daughters namely, Smt. Kaushalya Devi, Smt. Sumitra Devi and Smt. Janaki Devi as well as other family members. Plaintiff No. 1 Lalita Devi is the wife of Kalika Prasad Thakur and Plaintiff No. 2 Smt. Ramawati Devi is the wife of Narbdeswar Prasad Thakur.

4. The case of the Plaintiffs is that they are daughter in laws of the deceased and testator having been pleased with their services rendered in his old age executed

a deed of will on 22.07.1985 in their favour which was registered on the same day before the Registrar, Registration Office, Ara. Thereafter the testator died on 17.8.1985. The will, was the last will of the deceased and executed in presence of three witnesses, namely, Shivanand Sahay, Advocate, P.W. 1, Sita Ram Rai, P.W. 3 and Raghunath Sharma, P.W. 4. They also attested the will in presence of Testator. The deceased having disposing state of mind at the time of execution of the will, with his own free will and without any influence and after fully understanding the contents of the said will which was scribed by Jai Bahadur Rai executed it and the same was attested by the witnesses. As such the letters of Administration may be granted with the copy of the will attached to it to the Plaintiffs.

5. The widow of the deceased supported the case of the Plaintiffs that the deceased has executed the said deed of will, but during pendency of the case, she died. No other family members of the deceased objected to the grant of Letters of Administration with the will annexed to it. Only Harkesh Thakur, one of the sons of the deceased filed a caveat and contested the claim of the Plaintiffs. According to him, the deceased was suffering from serious ailment from 1951. He was suffering from gout and also suffering from paralytic attack. Prior to his death, he suffered a serious paralytic attack and was examined by a doctor at Buxar and when his condition had not improved, he was brought to Patna and thereafter he died on 17.8.1985. According to him, the property which is alleged to have given through will did not belong to the deceased. The deceased being of ill health was not in a fit state of mind to execute the will and the will was obtained by fraud. Alternatively, it was stated that even if the will was executed, the deceased did not know the contents of the will because of his ill health. According to him, the will should have been registered at Sub Registrar's Office at Buxar but the same was not registered at that place, rather the same was registered at Ara. This also shows that the document was created by the husband of the Plaintiffs in collusion with the scribe, witnesses and others. There was no provision for the widow or daughters of the deceased in the will. The deceased was affectionate to him as well as his wife and in no case, while executing the will, he would have excluded them from the properties.

6. The Plaintiffs have examined 13 witnesses in support of their case. Out of them, P.W. 2 Shivanand Sahay, P.W. 3 Sita Ram Rai and P.W. 4 Raghunath Sharma are the attesting witnesses and they have stated that the will was executed by the deceased Jagarnath Pd. Thakur and written by scribe Jai Bahadur Rai in their presence and the deceased having understood the contents of the will signed the will and they also attested the execution of the will. P.W. 1 Raghav Choudhary who had identified the deceased before Registrar, has proved the copy of the will. P.W. 5 is Chhatu Pandey, maternal uncle of the deceased Jagarnath Prasad Thakur who is a witness on the point that there was partition between the deceased, his wife and three sons and subject matter of will was allotted to his share. He was mentally fit at the; time of execution of the will. His eye sight was absolutely alright and he was able to read, write and understand

everything. He is related to the family of the deceased. P.W. 6 Surajdeo Mishra is a Purohit of the family who has spoken about the good health of the deceased. He had attended the Sharadh of the deceased at Patna. P.W. 7 Basudeo Pandey is an Advocate and relation of the parties. He is a witness on the point that the will was executed at Ara and scribed by Jai Bahadur Rai, who is dead. Jagannath Prasad Thakur executed the will after understanding the contents of the will. The deceased put his signature in his presence. The witnesses are (sic) also present at the time of execution of the will. At the request of Jagannath Prasad Thakur, Sita Ram Rai, Raghunath Sharma and Shivanand Sahay put their signatures on the will as witnesses. Jagannath Prasad Thakur put his signature and thereafter the will was presented before the Registrar of Registration. On inquiry being made by the Registrar, Jagannath Prasad Thakur accepted the execution of the will and put his L.T.I, on the back portion of the first page of the will in presence of the Registrar and Raghav Chaudhary identified the said L.T.I.

7. P.Ws. 8 and 9, namely, Smt. Ram wati Devi and Lalita Devi are the two legatees under the will. P.W. 10 Chuni Lala is the photographer who has taken the photograph at the time of funeral of the deceased. P.W. 11 Hari Pd. Singh identified the writing of the scribe, who is admittedly dead. P.W. 12 Pasupati Nath Upadhaya and P.W. 13 Tarkeshwar Prasad are the formal witnesses.

8. The objector-Defendant has examined nine witnesses. D.W. 1 Harendranath Mishra, D.W. 2 Ram Bilash Pandey, P.W. 3 Baikunth Singh, P.W. 4 Raj Nath Bhagat, D.W. 5 Brahmdeo Pandey, P.W. 6 Jagannath Bhagat and P.W. 8 Sheomuni Yadav are the residents of different villages and they have stated that the deceased was suffering from paralysis and was being looked after by the wife of Harkesh Thakur and as such he was not in a position to execute the will. The deceased had also expressed to them that after his death, all his three sons would inherit his property.

9. D.W. 7 Dr. Lalan Kumar Mishra is a Ayurvedic doctor who has proved his prescription as well as the prescription of other Dr., J. N. Pandey who had examined the deceased prior to his death. D.W. 9 is the Defendant himself who has stated that the said will was not executed and it was forged and fabricated document.

10. Both parties have filed their documentary evidence in support of their case.

11. The only question for consideration is whether the will in question is the last will executed by the testator in free state of mind in accordance with law.

12. Admittedly, the will is a registered one. According to Defendant, the will was not executed by the deceased and in this connection he has alleged several suspicious circumstances to show that the will was not a genuine will. In this connection the case of the Defendant is that the deceased has a wife also, but he did not make any provision for her in the will. The registration office was at Buxar which was nearer to Rajpur, but the will was not registered at that place, rather the deceased was brought to Ara town by the husband of the Plaintiff with

the help of their men. The deceased was suffering from serious ailment including paralytic attack and as such he was not in a position to execute the will.

13. The law on this point is well settled. Whenever a will is challenged on the ground of suspicious circumstances, the burden is on the propounder of the will to dispel the suspicious circumstances. Mere registration of the will by itself will not be sufficient to dispel all suspicious circumstances regarding validity of the will and propounder has to prove to the satisfaction of the Court that the will was the last will executed by the deceased. In other words, the propounder should satisfy the conscious (sic--conscience?) of the Court that the will in question was executed and attested in the manner as provided under the provisions of Indian Succession Act and that the deceased executed the will out of his own volition (sic) understanding the contents of the (sic).

14. (sic) prepared showing the share of the Plaintiff of the said suit to be 1/5th share and the deceased, his two sons and the wife of the deceased, namely, Parvati Devi each having 1/5th share in the property. First Appeal being First Appeal No. 51 of 1976 against the said judgment was filed. The said appeal was dismissed (Ext. 16). Final decree proceedings were started and in that partition suit a joint compromise petition was filed by the parties wherein shares to each of them to the, extent of 1/5th was indicated. Schedule I was allotted to Kalika Pd. Thakur, Schedule II was allotted to Harkesh Thakur, Schedule III was allotted to Narbadeshwar Prasad Thakur, Schedule IV was allotted to Jagannath Prasad Thakur (testator) and Schedule V was allotted to Parwati Devi. (Ext 21A and 21 B). The Defendant himself filed a petition on 25.9.1979 before the Assistant Consolidation Officer being Case No. 43 (K)/44 of 1978-79 for recording his separate chak on the basis of aforesaid allotment of land made in the said final decree which was allowed (Ext-22). The deceased also filed an application for allotment of separate chak to him and Chak panzi was registered in his name (Ext-24). It further appears that the name of the Defendant was also mutated on the basis of aforesaid allotment of land (Ext-25). It further appears that the mother Parvati Devi filed an application before the Consolidation Officer about the ill motive of the Defendant and also for an order of the court granting permission to gift her properties in favour of the Plaintiffs which was allowed and the Defendant has filed title suit which is pending.

15. The case of the Defendant that these documents were created on papers only, but there was no partition between the family members, has to be rejected as the judgment rendered by the civil Court allowing separate lands to the parties, have been acted upon by the parties including the Defendant. Thus, there is no difficulty in coming to the conclusion that there was partition between the family members of the deceased and the property which has been bequeathed by the deceased-testator was allotted to his share. On the basis of decree prepared by the Civil Court, names of the parties were recorded separately in the consolidation proceeding and mutated in the Government records.

16. The important question for consideration is as to whether the will was executed by the deceased in a fit state of mind on his own volition in favour of the Plaintiffs in accordance with law.

17. According to the Defendant, the deceased was suffering from serious ailment from the last several years and at the relevant time he was suffering from paralytic attack and was examined by the doctor. He was examined by Dr. Lalan Kumar Mishra, an ayurvedic practitioner at Raghunathpur. He has stated that in the year 1985, the deceased suffered from paralytic stroke. He was not in a position to move on his own. He was in a state of semi-consciousness. When he asked about this ailment he had informed him that he had a fall. He proved his prescription as Ext-A. He has also proved the prescription granted by Dr., J.N. Pandey as Ext.-B. He stated in his cross-examination that he used to attend 7 to 8 patients on average per day. As of date, he used to attend 10 patients. He has also stated that in the prescription the number mentioned on the left top portion signifies the serial number of patients attended daily and below that, is the number of yearly patient. He further stated that he maintains a register of the patients to whom he attends. He admitted that he cannot produce the patient register of 16.5.1985. The number "1634" mentioned in the prescription signifies that the patient concerned was the 1634th patient of the year 1985. Thus, according to his own showing, there is a doubt about the genuineness of the prescription. His evidence as a whole does not inspire confidence. This apart, it is highly improbable that the deceased having (sic--being?) a rich man, suffering from such a serious ailment could not be taken to expert doctor either at Buxar or any other place and will be treated by a Ayurvedic practitioner. Thus, his evidence is not worth acceptance.

18. The other witnesses of the Defendant on the point of illness and that deceased expressed his desire before them that the property after his death will go to his three sons, are all resident of different villages and not the village Rajpur (village of parties). D.W. 1 Harendranath Mishra is on litigating terms with the husband of the Plaintiffs and is a resident of another village. D.W. 2 Ram Bilash Pandey is a resident of another village and has also deposed earlier in favour of the Defendant. The other witnesses are also resident of another village. Thus, on the basis of their evidence, it cannot be said that the deceased was suffering from serious ailment and was not in a position to execute the will especially when neither daughters of the deceased nor any near relative of the deceased has come to depose that the deceased was suffering from serious ailment and was not in a position to move and was not in a position to understand, the contents of the document. No doubt, in the will, the deceased has made no provision for his wife and that may be a circumstance, but in this case, the admitted fact is that in the partition suit, a separate share was allotted to this wife and she came in possession over the same and with the permission of the Consolidation Officer, subsequently, she executed a deed of gift in favour of the Plaintiffs. In view of the fact that the property was available to the widow, if deceased did not make any provision for his wife in the will, is not a suspicious

circumstance specially when the wife has supported the execution of the will by her husband in favour of the Plaintiffs.

19. There is an office of Sub-Registrar at Buxar where the will could have been registered. The will has been registered at Arrah, the headquarters of the District. One of the witnesses of the Defendant has admitted that Buxar and Ara are at equal distance from village Rajpur. The Registrar is also competent to register the will. In that situation, the execution of the will at Ara is also not a circumstance to doubt the execution of the will.

20. P.W. 1 Raghav Choudhary has stated that the will was executed by the deceased in his presence. He identified the signature of the testator. It has been marked as Ext-2 series at first, second and last page. He has also proved the will which, has been marked as Ext-1. He has stated that the will was scribed by Jai Bahadur Rai who is dead. He scribed the will at the instruction of the deceased which was written in presence of three attesting witnesses, namely, Shivanand Sahay, Raghu Nath Sharma, Sitaram Rai and Basudeo Pandey and they also put their signatures on the will as Ext-5, 6 and 7 series. The will was drawn up in the premises of the Registry Office at Ara. Though the testator was suffering from paralytic attack, but his mental condition was sound. Thus, nothing has been brought in his cross-examination to disbelieve his statement.

21. The three attesting witnesses, namely, P.Ws. 2, 3 and 4 have also stated the same fact. Nothing has been brought on behalf of the Defendant to show that either any of them has any animus against him or they were interested in favour of Plaintiffs.

22. P.W. 11 Hah Pd. Singh is an scribe who has proved the handwriting of Jai Bahadur Rai, who is dead. The other witnesses including two legatees have proved that the will was executed by the deceased and the same is the last will of, the deceased.

23. After consideration of the evidence on record, I am of the opinion that none of the circumstances asserted, by the Defendant to show that the will was not a genuine one, has been proved by him. The evidence adduced by the Plaintiffs clearly shows that the will in question was executed by the testator out of free state of mind and on his own volition and he signed the will in presence of the attesting witnesses after understanding the contents of the will and the attesting witnesses have also signed the same in his presence.

24. Thus, the Plaintiffs have made out a case for grant of Letters of Administration with the will annexed to It. Accordingly, prayer is allowed and the objection raised by the Defendant is rejected.