
(2014) 06 OHC CK 0019
In the Orissa High Court
Case No : F.A.O. No. 613 of 2009

Sridhar Sahoo

APPELLANT

Vs

Malati Sahoo

RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:

Citation : AIR 2014 Ori 192 : (2014) 118 CLT 857 : (2014) 2 ILR 399 : (2014) 2 OLR 584

Hon'ble Judges : Raghubir Dash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Raghubir Dash, J.—Learned counsel for the appellants is present. No one appears on behalf of the respondent Nos. 1 to 6. Heard learned counsel for the appellants.

2. This appeal is against the judgment dated 22.9.2009 passed by the learned District Judge, Keonjhar in Test. Case No. 2 of 2008 refusing the prayer for grant of probate of the registered Will No. 1 dated 3.4.2001 executed by late Sendha Patra in favour of the appellants.

3. The respondents herein are the opposite parties in the probate proceeding who are the daughters of said Sendha Patra. It is not in dispute that the appellants who are the petitioners in the probate proceeding are the sons of respondent No. 2. It is also not in dispute that on the very day the Will was executed and registered the daughters of Sendha Patra had entered into an agreement that they had no objection if their father executed a Will in favour of the appellants. The respondents filed joint show cause stating that they have no objection if the probate is granted in favour of the petitioners.

4. In the probate proceeding one of the petitioners was examined as P.W. 1 and one of the attesting witnesses was examined as P.W. 2. The learned District Judge after examining the evidence placed before him observed that the attesting witness testified to the effect that on 3.4.2001 the deceased Sendha

Patra had executed the Will in favour of the petitioners-appellants while he was in good state of mind and that he executed the same without being influenced and pressurized by anyone. It is also observed that the attesting witness stated in the court that the testator executed the Will in presence of P.W. 2 and the other attesting witness. It is also stated in the impugned judgment that the attesting witness has proved that the Will was scribed by one Nirakar Behera as per the instructions of the testator and after the contents of the Will were read over and explained and confirming that the contents were correct the testator signed it in presence of P.W. 2 and the other attesting witness and thereafter the Will was presented before the registering authority, Anandapur for registration. Thus, it is found that the document put forward as Will of the deceased Sendha Patra is proved to have been duly executed and attested in accordance with law and at the time of such execution the testator had a sound disposing mind. However, the learned court below has refused to probate the Will solely on the ground that in respect of some items of the properties contained in the schedule of the registered Will it is not proved that the deceased had title. On that ground the learned court below has opined that the will is a suspicious document. It is well settled that the Court of Probate is only concerned with the question as to whether the document put forward as the last Will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court. In *Mrs. Hem Nolini Judah (since deceased) and after her Legal Representative Mr. Marlean Wilkinson Vs. Isolyne Sarojbashini Bose and Others*, which is relied on by this Court in *Laxmi Bai v. A. Chandravati*, 1995 AIR (Orissa) 131, it has been held that the questions of title are not decided in the proceedings for the grant of probate or letters of administration. In *Jagojoti Bose v. Bararuchi Bose*; AIR 1970 Orissa 29, this Court has held that probate or letters of administration are not concerned with title to the property but are only concerned with the due execution of the Will.

5. In view of the aforesaid settled position of law, the learned court below has committed illegality in refusing to probate the Will solely on the ground that the propounders of the Will have failed to prove title of the testator in respect of some items of the properties included in the schedule of the registered Will. Since it is found that the propounders of the Will have proved that the registered Will Ext. 5 has been duly executed and attested in accordance with law and at the time of such execution the testator was in sound disposing mind, the petition for probating the Will ought to be allowed. In the result, the appeal is allowed. The impugned judgment is set aside. The application for grant of probate is allowed. There shall be no order as to cost. The Probate Court is directed to take further action in the matter of grant of probate.