

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.82 of 2014

Poonam Kumari W/O Sri Umesh Kumar Sinha Resident Of Village Shashtri Nagar, Jehanabad, P.O. And P.S. Jehanabad, District Jehanabad.

... .. Appellant/s

Versus

1. Estate Of Deceased Mahima Sharan Singh and Anr. S/O Late Ramanand Singh Resident Of Mohalla Shashtri Nagar, P.O. And P.S. Jehanabad, District Jehanabad.
2. Umesh Kumar Sinha S/O Late Mahima Sharan Singh Resident Of Mohalla Shashtri Nagar, Jehanabad, P.O. And P.S. Jehanabad, District Jehanabad.

... .. Respondent/s

Appearance :

For the Appellant/s : Dr. Uma Shankar Prasad, Sr. Advocate
Mr. Dineshwar Prasad Singh
For the Respondent/s : Mr. Kamalakant Tiwary

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV JUDGMENT

Date : 10-04-2024

I have already heard the learned counsel for the parties.

2. This appeal has been preferred by the appellant/ Poonam Kumari against the judgment and order dated 20.12.2013 passed by the learned District Judge, Jehanabad in Probate Case No. 10 of 2011, whereby the application filed by the applicant for grant of probate to the Will dated 15.07.2020 executed by her father-in-law Late Mahima Sharan Singh was dismissed.

3. The case of the appellant (legatee), in brief, is that the testator Late Mahima Sharan Singh was her father-in-



law and by virtue of the services rendered to him, he was pleased with her and he executed a registered Will deed of the part of the land of khata no. 23, plot no. 402, area 10 ½ ft x 47 ft which was his (testator's share) in the property. The Will deed was registered on 15.07.2010 in sound mental state and condition of the testator. No coercion and undue influence was given to the sole testator. The deceased was permanent resident of Mohalla-Shastri Nagar, P.O.+P.S-Jehanabad, District Jehanabad and the property was situated within the jurisdiction of the court below. It has also been mentioned in the petition that the testator had not executed any Will in his life, except the Will dated 15.07.2010. Chandra Bhushan Prasad was the scribe of the Will, and after preparation of the Will, he read over the contents to the testator and the testator himself also read and understood that document and thereafter he put his thumb impression in presece of the witnesses, namely Satya Narain Singh, Mahesh Prasad Singh and Arjun Singh, who were present on the request of the testator to be witnesses of the Will deed. The deceased died on 24.12.2010 and *Sharadh* was also performed. The deed of Will is Ext.1/A and the death certificate of the testator is Ext.2

4. The learned counsel for the appellant has



submitted that the learned court below dismissed the probate case on technical grounds mentioning that the sons of the testator were not impleaded as parties in the probate application and the date of death of the wife of the testator was not given in the Will deed.

5. As a matter of fact, the testator had inherited his $\frac{1}{4}$ share in that property from his wife, in whose name the property existed. The wife of the testator pre-deceased to him. The testator had three sons, as such his share in that property is $\frac{1}{4}$. The legatee (appellant herein) is the wife of his son Umesh Kumar Sinha, who has been impleaded as opposite party no.2 in this case.

6. The learned counsel for the appellant has submitted that all the ingredients which are essential to be mentioned in a petition for probate required under Section 276 read with Section 279 of the Indian Succession Act, 1925 were specifically mentioned in the probate petition and despite that the learned court below dismissed the petition on technical grounds. Opposite party no.2 Umesh Kumar Sinha, who is the husband of the appellant, had appeared through *Vakalatnama* and supported the case of the petitioner/appellant. The attesting witnesses namely, Arjun Singh, Satya Narain Singh and Mahesh



Prasad Singh were examined as P.Ws 2, 3 and 4, respectively and they supported the factum of the execution of the Will deed by the testator in their presence in his sound mental state. P.W.5 is the scribe of the Will deed and P.W.1 is the appellant herself. Though the witnesses have unanimously supported the case of the appellant, and they stated that the Will deed was executed by the testator in the favour of the legatee as per his own sweet will, without any pressure, threat or inducement, in presence of the attesting witnesses.

7. The appellant impleaded only one son of the testator who is non else than her husband namely, Umesh Kumar Sinha. She did not implead other two sons of the testator and the reason for their non-impleadment was also not explained. The recitals of the Will deed show that the testator Mahima Sharan Singh has three sons, namely Vijay Kumar Singh, Suresh Kumar Singh and opposite party no.2 Umesh Kumar Sinha. The appellant is the wife of Umesh Kumar Sinha (opposite party no.2 herein). She impleaded only Umesh Kumar Sinha, her husband, as opposite party no.2 in Probate Case No. 10 of 2011 and also in the present appeal. When one son of the testator was impleaded, why two other sons were left to be impleaded, has not been explained and it casts/creates some



doubts.

8. Considering the above mentioned facts and circumstances, the matter is remitted back to the court below, after setting aside the impugned judgment and order dated 20.12.2013 passed by the learned District Judge, Jehanabad in Probate Case No. 10 of 2011, to decide the case afresh after giving opportunity to the other two sons of the testator namely, Vijay Kumar Singh and Suresh Kumar Singh. The records of the learned lower court is directed to be remitted back at once. The learned court below shall make every endeavour to dispose of the case within a period of nine months after receipt of the lower court records. The appellant shall implead Vijay Kumar Singh and Suresh Kumar Singh as opposite parties in her Probate Case No. 10 of 2011 and shall also send notice to them.

9. This appeal is disposed of on the basis of above mentioned observations/directions.

(Nawneet Kumar Pandey, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	03.04.2024
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