

IN THE HIGH COURT OF JHARKHAND AT RANCHI
M. A. No. 445 of 2016

Sitaram Goswami, S/o Late Trilochan Goswami, R/o village-Khilkhanali, P.O.-
 Bhitia, P.S.-Govindpur, District-Dhanbad, At present R/o village-Belkupa,
 P.O.- Debiyana, P.S.-Nirsa, District-Dhanbad

Appellant

Versus

1. Shanti Devi, Widow of Late Lakhi Narain Goswami
2. Badu Devi. D/o & Late Lakhi Narain Goswami
3. Ujjwal Kumar Goswami, S/o Late Lakhi Narain Goswami
4. Kumari Karunamayee, Minor D/o Late Lakhi Narain Goswami
 All residents of village-Belkupa, P.O.-Debiyana, P.S.-Nirsa, District-
 Dhanbad
5. General Public of Mouza- Belkupa, P.S.-Nirsa, P.O.-Debiyana, District-
 Dhanbad

Respondents

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Appellant	: Mr. Bhaiya V. Kumar, Advocate
For the Respondents	: Mrs. Jasvinder Kaur Mazumdar, Advocate Ms. Niharika Mazumdar, Advocate

C.A.V on 08.04.2025

Pronounced on 15.04.2025

1. This appeal is against the order passed in Probate Case No. 03 of 2005 by learned District Judge-II, Dhanbad under Section 276 of Indian Succession Act, by which the probate application has been dismissed.
2. As per the case of the Appellant/Applicant, Srimatiya Radha Debya @ Kusum Debya, daughter of Late Shashi Bhusan Goswami, and Wife of Late Basanta Goswami, executed her last WILL dated **03.09.2004** in favour of the Appellant.
3. After executing the said registered WILL, she died on **26.09.2004**. The suit property was recorded in the name of **Joginda Goswami** and Haripado Goswami and the testatrix happened to be the paternal grand daughter of Joginda Goswami, whereas the respondents are the heirs and descendants of Haripado Goswami. Testatrix Srimatiya Radha Debya @ Kusum Debya had purchased the said suit land vide registered sale deed no. 15702 dated 02.09.1968.
4. The execution of the WILL was witnessed by Tarapado Gorai (P.W.-2), Sripati Goari (P.W.-3) and Raju Goswami.
5. Grant of probate is contested by defendant Lakhi Narain Goswami (since dead) who filed show cause before the Probate Court, *inter alia*, on the ground that testatrix Radha Debya @ Kusum Debya had not executed

WILL in favour of the applicant, as she was ill since last few months before her death and was not mentally and physically fit in the month of September, 2004, when she died. Further objections have been raised on the right of the testatrix to bequeath the property.

6. Learned Probate Court framed the following issues: -

- I. Is the case maintainable in its present form?
- II. Is there any cause of action for the present case?
- III. Is the alleged WILL executed by Smt. Radha Debya @ Kusum Debya of dated 03.09.04 in favour of applicant is valid?
- IV. Is the alleged WILL dated 03.09.04 of Smt. Radha Debya @ Kusum Debya was the last WILL of the testator?
- V. Has testator Radha Debya @ Kusum Debya made a WILL dated 03.09.04 voluntarily and in sound state of mind and body and without any influence?
- VI. Is the applicant entitled for grant of probate of WILL as prayed for?

7. The probate application has been rejected mainly on the following grounds: -

- (1) In cross-examination, applicant (P.W.1) stated that he had told the deed writer what should be written in the WILL, which showed that the WILL was prepared on the dictation of the beneficiary and not as per instruction of the Testatrix, and that WILL was not prepared voluntarily in sound state of mind.
- (2) The said WILL is said to be executed on 03.09.04 and Radha Debya died on 26.09.04, so, after 23 days of the execution of the alleged WILL and it has come in the evidence of the witness of Opposite Parties that Radha Debya was ill and bed ridden six months before her death and she was unable to walk and speak.
- (3) The attesting witnesses of WILL i.e., P.W.2 and P.W.3 were in inimical relation with the O.P.

8. It is argued by the learned counsel Mr. Bhaiya V. Kumar, on behalf of the appellant that learned Probate Court misdirected itself while rejecting the application of probate for registered WILL, by taking into consideration extraneous factors into account. The uncontroverted evidence adduced on behalf of the plaintiffs, established that the deceased was living under the care and protection of the applicant. As the deceased was Bengali speaking woman, therefore, it was but natural for the applicant to

translate the statement being made by the testatrix to the deed writer. Not a chit of paper has been adduced into evidence on behalf of the defendants/ opp. parties with regard to illness of the testatrix and, therefore, the finding that she was not physically in a fit and disposing state of mind to execute the WILL, is unsupported by any evidence.

9. It is further argued that the depositions of the attesting witnesses P.Ws. 2 and 3 have been rejected in a most summary manner by only stating that they were on inimical term with the opposite parties.
10. Ms. Niharika Mazumdar, learned counsel for the respondents, contended that in the WILL, there is no description of the property by which the property has been bequeathed in favour of the applicant. It only states that her entire property is bequeathed in favour of the applicant.
11. It is argued by learned counsel that testatrix was living with OP No.1 Lakhi Narayan Goswami and this has come in the testimony of DW-5, who happens to be his wife. She has deposed in para-13 onwards that the testatrix was 90 years old at the time of her death and for last six months, she was not even in a position to walk around. She had never visited Dhanbad Registry Office and the registry had been obtained setting up an imposter. During her lifetime, she was living with OP No.1. The testimony of DW-5 is corroborated by DW-2 Kirit Bhushan Gorai, who was neighbour and independent witness and has deposed in para-17 that at the time of death of Radha Debya (testatrix) her age was 85 years and the last rites were performed by O.P. No.1 Lakhi Narayan Goswami. In para-18 he has deposed that she was not in a position to move around and therefore, it is wrong to say that she had executed a registered sale-deed in favour of the appellant.

DW-3 in para-16 has deposed that testatrix was looked after by OP No.1. It has further been argued that the applicant PW-1 has deposed in para-29 that the WILL was drafted as per the instructions of the scribe and therefore it was not made as per the instruction of testatrix.

DW-2 has deposed in para-32 that family of Sitaram Goswami was living in the house of Radha Debya. Reliance is placed on behalf of the appellant on **(1987) 1 SCC 610 Smt. Malkani Vs. Jamadar and Ors.**

ANALYSIS

12. The registered WILL dated 03.09.04 executed by Smt Radha Debya in favour of Sita Ram Goswami in the presence of attesting witnesses

Tarapad Gorai (PW-2), Sripati Gorai(PW-3) and Raju Goswami has been adduced into evidence and marked as Ext-1. PW-2 has deposed that the WILL was executed by Radha Debya in sound state of mind in the Registry Office Dhanbad, in his presence. He has further deposed that Sripati Gorai (AW-3) and Raju Goswami were witnesses to the said WILL.

13. PW1 the beneficiary has deposed in para-8 that he had been maintaining the Testatrix and taking care of her. In para 17 of the cross-examination, he has deposed that Testatrix was his aunt (fuferi mausi) and she had kept him to look after her and was living there for last 40 years. PW-2 has also deposed in para-7 that Testatrix had kept the applicant with her to look after her property, and being satisfied by his services, had executed the WILL of her property in his favour. It has also been deposed by him in para-19 of the cross-examination that 10-15 days before the execution of the WILL, she had called him for discussing the matter of execution of the WILL. Sripati Gorai and Hemchandra Gorai were present at that time. He has also deposed that they had gone for the execution of the WILL in a reserved vehicle, and she had said that Mihir Das will scribe the WILL. WILL had been also witnessed by Raju Gosai.

PW-3 in para 21 of the cross-examination has stated that Testatrix had called him and disclosed her intent of executing the WILL in favour of Sita Ram Goswami. He has also corroborated the testimony of PW-2 that they were called for and told by the Testatrix that she wanted to execute the WILL in favour of the Applicant.

14. As per the recital of the WILL, it had been executed with respect to all her movable and immovable property.
15. At the outset it may be noted that a probate court is not competent to determine the title of the property bequeathed. The jurisdiction of a probate court is limited to determine that the WILL executed by the testator was his last WILL. Whether he/she had right to execute the WILL with respect to the property is beyond consideration in a probate application.
16. Therefore, if the description of the land sought to be bequeathed has not been detailed in the WILL, and the testamentary disposition is with respect to the entire property of the Testatrix, probate application cannot be denied on this score. It makes no difference what are the properties

which have been set out in the probate application, as probate is granted with respect to the property as stated in the WILL and not with respect to the description given in the probate application.

17. What are the factors to be considered by the Court in a probate case has been dealt with in **Jaswant Kaur v. Amrit Kaur, (1977) 1 SCC 369** wherein it has been held:

10. There is a long line of decisions bearing on the nature and standard of evidence required to prove a WILL. Those decisions have been reviewed in an elaborate judgment of this Court in R. Venkatachala Iyengar v. B.N. Thimmajamma [AIR 1959 SC 443: 1959 Supp 1 SCR 426]. The Court, speaking through Gajendragadkar, J., laid down in that case the following propositions:

“1. Stated generally, a WILL has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of WILLS, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a WILL to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the WILL speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the WILL came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last WILL and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the WILL.

4. Cases in which the execution of the WILL is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the WILL under which he receives a substantial

benefit and such other circumstances raise suspicion about the execution of the WILL. That suspicion cannot be removed by the mere assertion of the propounder that the WILL bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the WILL was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the WILL excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last WILL of the testator.

5. It is in connection with WILLS, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasizes that in determining the question as to whether an instrument produced before the court is the last WILL of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the WILL has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the WILL, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the WILL may raise a doubt as to whether the testator was acting of his own free WILL. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.”

18. In view of the above, it follows that the mode of proving a WILL does not ordinarily differ from that of proving any other document, except as to the special requirement prescribed in the case of a WILL by Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. The onus of proving WILL is on the propounder and in the absence of suspicious circumstances surrounding the execution of the WILL, on

proof of testamentary capacity and signature of the testator as required by law, is sufficient to discharge the onus. Where, however there are suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before the WILL could be accepted as genuine. The presence of suspicious circumstances makes the initial onus heavier and the propounder must remove all legitimate suspicion before the document can be accepted as the last WILL of the testator. (See **Guro (Smt) v. Atma Singh, (1992) 2 SCC 507**).

19. WILL in question is registered, and this does not relieve the propounder of the WILL from the requirement of getting it probated, but its registration raises presumption of its due execution. Law is settled that there is presumption of genuineness in favour of registered document and heavy burden lies on the party who assails such a document **(2009 (5) SCC 713 Vimal Chand Ghevarchand Jain and Ors. Vrs. Ramakant Eknath Jajoo)**.
20. Attesting witnesses PW-2 and PW-3 have proved its due execution. There is no evidence to suggest that any fraud was played in its execution. Law is settled that if a WILL appears on the face of it to have been duly executed and attested in accordance with the requirements of the statute, a presumption of its due execution and attestation applies (see **Gurdev Kaur and Ors. v. Kaki and Ors., (2007) 1 SCC 546**). What prompted the court to hold that these witnesses were on inimical terms with the objectors/respondents is not clear. Unless there is some material to suggest that they were ill disposed and were out there to gain something by deposing in a particular manner against the respondents, their evidence cannot be discarded.
21. What circumstances would be regarded as suspicious cannot be precisely defined or exhaustively enumerated. That inevitably would be a question of fact in each case. In any case mere absence of detailed description of property in the WILL cannot be regarded as a suspicious circumstance. Deposition of witnesses that the Testatrix was ill since last six months, and was not in a position to stir out of her home, is not supported by any documentary evidence of her treatment. Such a document could have been produced, particularly when the objectors/respondents claim that she was under their care and was being looked after by them. Merely because the Testatrix died within a month after the execution of the WILL is by itself not sufficient to infer

that, she was not in sound health and disposing state of mind at the time of execution of the WILL.

22. Evidences have to be appreciated in their totality, and a stray statement in the cross-examination of PW-1 that he had stated to the scribe about what is to be written, is not sufficient to rebut the weight of evidence of its due execution. In para 28 of the cross-examination, it has been deposed by him that WILL was prepared as per the instruction of the Testatrix. In para-29 he has deposed that he had stated to the scribe what has to be written in the WILL. As discussed in the foregoing paragraphs, PW -2 and PW -3 have also deposed that Testatrix had a meeting with them about 10-15 days before the execution of the WILL, where she had expressed her intention to execute the WILL in favour of Sita Ram Goswami. In this view of matter, it cannot be said that due execution of the WILL was vitiated on account of any active part played by the beneficiary.
23. For the reasons discussed above, this Court is of the view that learned Probate Court erred in refusing to grant probate and therefore the impugned order is set aside. The application for grant of probate which was converted into a suit, as aforesaid, is allowed.
24. Let the probate be granted to the plaintiffs-executors, in respect of the WILL executed and registered on 03.09.2004 by Srimatiya Radha Debya @ Kusum Debya (since deceased) with a copy of the WILL annexed, in accordance with the law and upon payment of requisite court fees.

Miscellaneous Appeal is accordingly allowed.

Pending I.A., if any, stands disposed of.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi

Dated 15th April, 2025

NAFR/Pawan/-