
(2025) 10 JH CK 0062

Jharkhand HC

Case No: Miscellaneous Appeal No. 348 Of 2024

General Public through
Dewanti Devi

APPELLANT

Vs

Smt. Manju Devi

RESPONDENT

Date of Decision: Oct. 16, 2025

Acts Referred:

- Indian Succession Act, 1925 — Section 63, 263(b), 299
- Evidence Act, 1872 — Section 68

Hon'ble Judges: Gautam Kumar Choudhary, J

Bench: Single Bench

Advocate: Niraj Kishore, Shobha Rani, Amar Kr. Sinha, Sumit Kumar, Md. Abd

Final Decision: Dismissed

Judgement

Gautam Kumar Choudhary, J

1. The instant misc. appeal has been filed under Section 299 of the Indian Succession Act, 1925 against the grant of probate of WILL executed by Ganga Devi on 16.10.1998 in favour of respondent-Manju Devi with respect to the properties detailed in Schedule-I of the plaint.

2. It is argued by learned counsel the appellant that Ganga Devi was the first wife of Shiv Nandan Sao, whereas Bilkhi Devi, mother of the present appellant Dewanti Devi was the second wife of Shiv Nandan Sao.

3. It is contended that by concealing the above fact and without impleading Dewanti Devi in the probate case, the probate application was filed in which the probate has been granted for the said WILL.

4. It is argued that the impugned order suffers from infirmity on two counts.

Firstly, Ganga Devi being not sole heir and descendant of Shiv Nandan Sahu had no exclusive right to transfer the property by testamentary way of WILL to Manju Devi.

Secondly, by not impleading Bilkhi Devi or Dewanti Devi in the probate case, who were necessary parties, the probate was obtained fraudulently and, therefore, it is fit to be set aside in terms of Section 263 (b) of the Indian Succession Act.

5. It is submitted by learned counsel for the respondent-original probate applicant that the instant appeal is not maintainable as the appellant was not even a party before the Probate Court. The said WILL was registered on 16.10.1998 and the registered document carries a presumption of genuineness and the said presumption has not been rebutted.

6. So far the testamentary capacity to dispose of the property is concerned, the title of the property cannot be looked into in a probate case for which a separate suit has already been filed vide Original Title Suit No. 54/2021. It is contended that since the appellant did not come from the line of Shiv Nandan Sao and the relationship has been denied, therefore, she was not impleaded in the case. However, citation was issued to the public at large, but no objection was raised from any quarter.

7. None appeared before this Court on behalf of the public to contest the probate case, or to state that the Dewanti Devi was also the heir and descendant of Shiv Nandan Sao. Attesting WILL has been duly proved and one of the attesting witnesses as per requirement under Section 63 of the Indian Succession Act read with Section 68 of the Evidence Act has already proved the WILL.

8. Having considered the submissions advanced on behalf of both sides, there cannot be quarrel with the legal proposition that hearing in probate cases are summary in nature and confined to adjudication, if the WILL was the last WILL of the testator executed in a free and disposing state of mind. Whether the testator had title over the property for which the WILL was executed is beyond the zone of consideration by a Probate Court. The title can be determined in a suit duly filed before a Civil Court.

9. The genealogy, as asserted by the appellant at this stage, has been denied and admittedly, the appellant was not a party before the learned Trial Court. The WILL was the registered WILL and has been duly proved before the learned Probate Court. If the appellant had a right over the property of Shiv Nandan Sao and that is established in the suit, it goes without saying that the testamentary disposition of property made by Ganga Devi will be confined to the rights she had over such property.

Under the circumstance, I do not find any merit to interfere with the impugned judgment.

Miscellaneous Appeal stands dismissed with cost. Pending I.A., if any, stands disposed of.