

**(1996) 12 GAU CK 0013****Gauhati High Court****Case No:** M.A. (F) No. 143 of 1992

Bishnu Maya

APPELLANT

Vs

Kishori Devi

RESPONDENT

**Date of Decision:** Dec. 4, 1996**Acts Referred:**

- Succession Act, 1925 - Section 65

**Citation:** (1997) 2 GLR 400**Hon'ble Judges:** J.N. Sharma, J**Bench:** Single Bench**Advocate:** P.S. Deka, for the Appellant; None, for the Respondent**Final Decision:** Allowed

### **Judgement**

J.N. Sarma, J.

F.A. No. 85/92 has been filed against the judgment dated 9.9.92 passed by the Additional District Judge, Kamrup, Guwahati in Probate Title Suit No. 4/90. By the impugned judgment the suit was dismissed on contest with costs.

2. F.A. No. 143/92 has been filed against the judgment dated 9.9.92 passed by the same Court in Misc. (J) Case No. 276/90 rejecting the prayer of the Appellant to revoke the Succession Certificate granted earlier by the Court.

3. The brief facts are as follows:

One Kharge Bahadur was an employee of Assam State Electricity Board. He was unmarried. He was suffering from T.B. and was ill for a long time. During his illness he was looked after by one Smti. Bishnu, wife of a co-employee of Kharga Bahadur. Ultimately, Kharga Bahadur died at the place of Smti. Bishnu and his general rites were performed by Smti. Bishnu who was accepted as Dharma sister by Kharga Bahadur. Some monetary benefit was available for his service in A.S.E.B. and that amount was claimed by his relation sister, who was aged about (sic) years and she

obtained a Succession Certificate for this amount. Having come know of this Succession Certificate Case, the present Appellant Smti. Bishnu filed to application for revocation and filed Anr. application for Probate with regard a will executed by Kharga Bahadur giving her all the property (movable) only the service rendered by her during his illness. That application for revocation the Succession Certificate was registered as Misc. (J) Case No. 276/88 before the learned Additional District Judge and the Probate Case was registered as P.T.S. (sic)11/90. In that Probate Case the real sister of the deceased Kharga Bahadur filed (sic) objection claiming that the Will is forged and fabricated. The total amount involved is only Rs. 38,971.43P. The Will in question was a registered document.

4. Before the Trial Court following witnesses were examined. P.W. 1 Smti. Bishnu Narayan (the Probator of the Will). P.W. 2, Surjya Kalita, a petition writer who is an attesting witness. P.W. Kharga Bahadur, husband of Smti. Bishnu Narayan. P.W. 4 Ganga Ram Goswami, the Petition Writer and Scribe of the will. P.W. 1 Smti. Kishori Devi, the objector. The will was exhibited as Exhibit-1. The only ground on which the Trial Court rejected the prayer for probate was that by the will the 402 real sister was deprived and the property was given to a stranger. But the Trial Court failed to consider the relationship between die real sister and the brother. The real sister in her deposition has stated, inter-alia, as follows: "I do not know whether he was suffering from T.B. I do not know that he died. I do not know when he died." So this was the relation between the real sister and the deceased brother. The brother was suffering from T.B. and was living with Anr. lady being nursed by her and this real sister turned her back to the ailing brother and after the death of the ailing brother tried to snatch the money. From the evidence it appears that for a period of 8 years during his illness this lady nursed and gave shelter to Kharge Bahadur and if it way for his love and affection that a Will was executed in favour of Smti. Bishnu. This cannot be suspicious. As because the real sister would be deprived on that ground alone, the learned Additional District Judge dismissed the suit rejecting the prayer of the Appellant. That is not the law. In Rabindra Nath Mukherjee and another Vs. Panchanan Banerjee (dead) by L.Rs. and others, the Supreme Court held that deprivation of the claim of the natural heirs alone cannot, raise any suspicion, because whole idea behind execution of Will is to interfere with the normal live of succession.

5. The Supreme Court in that particular case further pointed out that if the Will is registered and if the Sub-Registrar issues certificate and that the contents of the will is read over, that itself is sufficient and to show the voluntary (sic)the document. In Vrindavanibai Sambhaji Mane Vs. Ramachandra Vithal Ganeshkar and others, in para 45 has pointed out that a Will has to be proved like any other document except for the fact that it has to be proved after the death of the testator. Further when fraud is pleaded the burden is on the party who taken up that plea.

6. In this particular case it is seen that as required by Section 65 of the Indian Succession Act, the Will was duly proved by the Scribe as well as by the Attesting witness. This Will is still in force. The Supreme Court in Anr. case reported in AIR 1995 1852 (Gopalan v. B. Nontessor pointed out that if a Will is registered and endorsed duly by the Registrar, then it will be ordinarily a valid Will.

This being the position this appeal is allowed and the Probate and the probate of the will Exhibit-1 is granted subject to the realisation of the fees. In view of the decision in the probate matter the application for revocation of the Succession Certificate is also to be allowed. Accordingly, M.A. (F) No. 143/92 shall be allowed and the Succession Certificate granted in favour of Kishori Devi shall stand cancelled.

7. I have heard Shri P.S. Deka, learned Advocate for the Appellant. None appears for the Respondent.